

MANUAL OF PROCEDURE
IN THE
Supreme and Exchequer Courts
OF CANADA.

Embracing the various Rules and Statutes relating to such Courts
and Practice therein ; including the British North America
Act, 1867, and Acts amending the same, and
the Petition of Right Act, 1876.

TOGETHER WITH

AN INTRODUCTION

Containing useful information respecting the Exchequer Court of
England, the Exchequer Court of Canada, and
Proceedings by Petition of Right.

BY

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AND EXCHEQUER COURTS OF CANADA.

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Supreme and Exchequer Courts

OF CANADA

AN INTRODUCTION

ROBERT CASSEL JR.

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JUDGES
OF THE
Supreme and Exchequer Courts of Canada.

The Honorable WILLIAM BUELL RICHARDS, C.J.
" " WILLIAM JOHNSTONE RITCHIE, J.
" " SAMUEL HENRY STRONG, J.
" " JEAN THOMAS TASCHEREAU, J.
" " TELESOPHORE FOURNIER, J.
" " WILLIAM ALEXANDER HENRY, J.

OFFICERS OF THE COURT.

ROBERT CASSELS, JR., ESQ., *Registrar.*
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WALTER J. THICKE, ESQ., *Registrar's Clerk.*

1863

Supreme and Exchequer Courts of Canada

THE HONOURABLE WILLIAM WELLS RICHARDS, C.J.
WILLIAM JOHNSTONE RICHARDS, J.
CHARLES HERBERT STROUD, J.
LESLIE THOMAS TAYLOR, J.
ALEXANDER FORTY, J.
WILLIAM ALEXANDER HENRY, J.

CLERKS OF THE COURT

ROBERT CAMPBELL, J. Sec. Reg. Gen.
GEORGE DE VAIL, Sec. Gen. Sec.
WILLIAM J. FORTY, Sec. Gen. Sec.

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INTRODUCTION.

The object of the present Manual is to place in a convenient form in the hands of the members of the Bar the various Statutes and Rules bearing upon the jurisdiction and practice of the Supreme and Exchequer Courts of Canada.

THE SUPREME COURT OF CANADA.

With reference to the Supreme Court, there are but few of the Rules published by the Judges requiring particular comment. They differ little from the Rules governing the practice in the Appeal Courts of the different Provinces, and will, therefore, be easily understood. Several notes have been added which, it is hoped, will be useful to the practitioner.

There is one Rule, however, to which attention may be particularly called, Rule 57, which refers to the Tariff of Costs between party and party. The tariff itself, which will be found in its proper place

in this volume, is a combination of a block tariff, such as the profession are accustomed to in the Province of Quebec, and a detailed tariff, such as the profession of the other Provinces are familiar with. It will be found to combine the advantages of both these systems and to be sufficiently liberal to the profession without being too burdensome to suitors.

THE EXCHEQUER COURT OF CANADA.

With respect to the practice of the Court of Exchequer, it will be seen that, except as regards causes in which the cause of action or suit may arise in the Province of Quebec, and to which the practice of the Superior Court of that Province has been made applicable, the practice of the High Court of Justice in England has been adopted, and that the Rules of the Court are based upon the Rules issued by the Supreme Court of Judicature in England. But cases may arise in which the Rules, as thus framed, may be found insufficient or inapplicable. In such cases, the practice of the Revenue side of the Exchequer Division of the High Court of Justice will have to be followed.

By order 62 of the Rules issued under the Supreme Court of Judicature Act, 1875, it is provided that nothing in the said Rules shall affect the practice or procedure in proceedings on the Revenue

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side of the Exchequer Division. These Rules, therefore, will afford no assistance to the practitioner who may be obliged to follow the revenue practice of the Court of Exchequer in England; and as the works on this practice are few, and numerous alterations have been made in it by recent statutes, it has been thought advisable to give, for the convenience of the profession, a short account of the origin and present position of the Court, and also to point out where the various Statutes and Rules bearing upon its practice can be found.

"The name of the Exchequer," says Mr. Price in his work on the law of the Exchequer, "given to this Court appears to have been a matter of much conjecture and contention, in respect of its derivation, amongst antiquaries and etymologists. It has consequently, been at different times and by different persons ascribed to various roots, and deduced from very different sources. The most approved and commonly received *etymon*, and that which has at length acquired the sanction of the most esteemed writers who have treated of this Court, is the word *Scaccus*, a chequered board (or chess-board), in allusion to the game of chess; the blue and white chequered woollen cloth (also for the same reason called *scaccarium*) with which the common table of the Court was always covered, as it is still at this day, being figured with small squares after the man-

ner of a chess-board. That cloth or figure board was in former times of general practical use for the purpose of computation; for anciently, when the King's accounts were made up, the accountants told out the money, and set forth their accounts thereon, after the simple method of those days, marking the several sums on the squares and settling them with counters."

Chief Baron Gilbert, in his treatise on the Court of Exchequer, says: "There is very great difference among the antiquaries touching the name. Basnage in his 'Customary of Normandy,' derives the word *exchequer* from the German word *sheckeu*, which signifies to send, because this Court was composed of such great Lords as were particularly sent for to hold Court with the seneschal or steward on any occasion."

"The more common derivation of the word *chequer* is from a chequer board, or chess-board. They call the board on which they played at chess a chequer, because in the game they give check, and this Court was so called, because they laid a check of that kind upon the table, upon which the accountants told out the King's money and set forth the account in the same artificial manner as in the cofferers account is done at this day."

The Court of Exchequer was at first instituted principally to order the revenues of the Crown.

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to recover the King's debts and duties, and at an
early day it usurped an additional jurisdiction be-
tween subject and subject. By the Statute of
Rutland, 10 Ed. I., it was attempted to prevent this
usurpation, and it was, among other things, enacted
that no plea should be holden or pleaded in the
Exchequer unless it should specially concern the
Crown, its ministers or agents, in a matter appertain-
ing to the King's exchequer. This statute failed to
effect the desired end, for it was held not to apply
to suits between subjects who were debtors to the
Crown. Such parties were privileged to sue and
implead all manner of persons in the same Court
that they were themselves called into. For this
purpose, they resorted to a writ called a *Quo minus*,
in which the plaintiff suggested that he was the
King's farmer or debtor, and that the defendant had
done him the injury or damage complained of—
Quo minus sufficiens existit—by which he is less
able to pay the King his debt or rent. Afterwards,
and by gradual connivance, this surmise of being
debtor to the King was allowed to be inserted by
persons who did not really stand in that capacity,
and came to be considered as mere words of course,
not traversable, so as to open the Court to all. The
same fiction was permitted on the equity side of the
Court, where any person might file a bill against
another upon a bare suggestion that he was the

King's accountant, a suggestion which it was permitted to controvert. This usurpation long ripened into an indefeasible and unquestionable title, and at length, by 2 Will. 4, ch. 39, the writ of *certiorari* was abolished and a new method substituted, giving a direct and proper jurisdiction to this Court, and making the process issued in this court in personal actions uniform with those issued from other Courts.

The Court of Exchequer formerly exercised an extensive equity jurisdiction. On the Revenue side of the Court of Exchequer in England, relief was obtained by Crown debtors on equitable grounds by virtue of the express enactment of the Statute 33 & 34 Vict. c. 39, sec. 79, which is in force in the Province of Ontario and other Provinces of the Dominion, and which is as follows : "*Provided always that it be enacted by the authority aforesaid, That if any person or persons of whom any such debt or duty is, or at any time hereafter shall be demanded or required, allege, plead, declare, or shew, in any of the said Courts, good, perfect, and sufficient cause and matter in law, reason, or good conscience, to bar or discharge of the said debt or duty ; or that such person or persons ought not to be charged or chargeable to or with the same, and the same cause or matter so alleged, pleaded, declared, or shewed sufficiently proved in such one of the said Courts*"

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he or they shall be impleaded, sued, vexed, or
troubled for the same, that the said Courts and
every of them shall have full power and authority
to accept, adjudge, and allow the same proof, and
wholly and clearly to acquit and discharge all and
every person or persons that shall be so impleaded,
sued, vexed, or troubled for the same, anything
in this present Act, before mentioned, to the con-
trary notwithstanding."

Prior to the passing of this Statute, the Court
had usurped jurisdiction as an ordinary Court of
Equity between subject and subject, and this usur-
ped jurisdiction it continued to exercise.

By the 5 Vic. ch. 5, after reciting that, whereas
the business of the Plea side of Her Majesty's Court
of Exchequer at Westminster has of late years
greatly increased, and a transfer to the Court of
Chancery of the jurisdiction of the said Court of
Exchequer as a Court of Equity would relieve the
Judges of the said Court of Exchequer, and would
otherwise tend to promote the public advantage, it
was enacted : "That on the fifteenth day of Octo-
ber, one thousand eight hundred and forty-one, all
the power, authority, and jurisdiction of Her
Majesty's Court of Exchequer at Westminster as a
Court of Equity, and all the power, authority, and
jurisdiction which shall have been conferred on or
committed to the said Court of Exchequer by or

under the special authority of any act or acts of Parliament (other than such power, authority, and jurisdiction as shall then be possessed by or be incident to the said Court of Exchequer as a Court of Law, or as shall then be possessed by the said Court of Exchequer as a Court of Revenue, and not heretofore exercised or exercisable by the same Court sitting as a Court of Equity), shall be by force of this Act transferred and given to Her Majesty's High Court of Chancery to all intents and purposes in as full and ample a manner as the same might have been exercised by the said Court of Exchequer if the Act had not passed ; and the same power, authority, and jurisdiction shall, so far as respects the exercise thereof by the said Court of Exchequer cease and determine : *Provided always*, that this Act shall not abridge, lessen, or in any wise affect the power, authority, or jurisdiction of the same Court as a Court of Revenue not heretofore exercisable by the same Court sitting as a Court of Equity."

In the case of *The Attorney-General v. The Corporation of London*—L. J. (N. S.) 14 Eq. 305—Lord Langdale, Master of the Rolls, *held* that by this Statute the jurisdiction theretofore exercised by the Court of Exchequer as a Court of Equity was transferred to the Court of Chancery, and that the Crown, in respect of matters of revenue, might sue

in the Court of Chancery in the same way it could have sued in the Court of Exchequer previously to the passing of the 5 Vic. ch. 5.

From this opinion the Barons of the Exchequer dissented in the case of *The Attorney-General v. Halling* (15 M. & W. 685), and held that the equity jurisdiction of the Court of Exchequer as a Court of Revenue is not taken away by this Statute.

In this case, Chief Baron Pollock, enters more fully into the origin of the jurisdiction of the Court of Exchequer on its equity side and on its plea side, and shews that at the time of the passing of the 5 Vic. ch. 5, "in the Exchequer there was a Court of Revenue held before the Treasurer, the Chancellor of the Exchequer, and the Barons, exercising for the due collection of the revenue, a procedure after the forms of a Court of Equity, and a Court of Revenue held before the Barons, exercising the forms of procedure proper to the other Courts of Common Law, both, however, having certain peculiarities familiarly known by the name of *Cursus Scaccarii*, and that, annexed to and as a part of this General Revenue Court, there were incidentally Courts of Equity and of Common Law for its officers and the real Crown debtors; and that, further, an ancient though originally usurped jurisdiction was exercised by it as an ordinary Court of Equity between subject and subject, and that by statute (abolishing a

similarly usurped jurisdiction at common law between subject and subject) there existed a Court of Common Law, which, like the other Superior Courts of Common Law, exercised incidentally certain equitable powers of interpleader, and the like, some of which had been previously conferred on all those Courts by various statutes, and others had been by common law exercised as parts of their practice from time immemorial.

“We think it never could have been the intention of the Legislature to leave this Court, as a Court of Revenue, with a maimed and insufficient authority to decide equitably in matters of revenue between the Crown and subject, and to send the subject into the Court of Chancery for such relief, leaving him, however, to be charged in the Court of Exchequer, and thus subjecting him, therefore, to be harassed by an application to both Courts.”

. “We have arrived at the conclusion, that the construction of the 5 Vic. ch. 5, sec. 1, which is the literal one, and which avoids all these inconveniences, is also the true one, and that the Court has, notwithstanding that Act, retained all its actual and incidental jurisdiction, equitable as well as legal, which it has as a Court of Common Law, and has retained all its proper jurisdiction as a Court of Revenue, for the collection of the revenues of the

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Crown, whether the jurisdiction be exercised after the forms of common law or equity ; and that it has lost all jurisdiction as a Court of Equity between its officers and Crown debtors, and the other subjects of the realm, which was before incident to it as a Court of Revenue, and was exercised by it as a mere Court of Equity ; and, further, that it has lost all its usurped jurisdiction as a Court of Equity, between subject and subject, a jurisdiction which, though not really incident to it, was nevertheless, at the time when the Act was passed, exercised *de facto* by it as a mere Court of Equity in the Court of Revenue.

The case of *The Attorney-General v. The Corporation of London* was afterwards appealed to the House of Lords (1 H. of L. Cases 440), by whom the judgment of the Master of the Rolls was confirmed on other grounds, the Lord Chancellor (Lord Cottenham) and Lord Campbell both refusing to pronounce upon the effect of the 5th Vic. ch. 5. They held that to do so was unnecessary, inasmuch as the case before them was one in which the information might be maintained by the Crown in the Court of Chancery without any transfer of any new power to the Court of Chancery from the Court of Exchequer. The question, therefore, as to the equitable powers of the Court of Exchequer as a Court of Revenue seems to have remained in Eng-

land in a somewhat doubtful position, the more doubtful because Lord Cottenham, in the course of the argument before the House of Lords, made use of certain expressions which would seem to shew an inclination on his part to adopt the opinion formed by Lord Langdale as to the construction of the statute. For instance, at page 461, Lord Cottenham says: "If the Crown may still go to the Court of Exchequer as a Court of Equity, the statute requires amendment, for it has taken away all the machinery by which this sort of business was transacted in that Court. There can be no doubt of the intention of the Legislature to take away all jurisdiction from the Court of Exchequer in equity."

In the case of *The Attorney-General v. Edmunds* (L. R. 6, Eq. 381), it was contended by the counsel for the defendant that the paramount and exclusive jurisdiction of the Court of Exchequer as a Court of Equity in revenue matters still existed, and that the Court of Chancery had no co-existing jurisdiction; but it was held that that being a case which, as between subject and subject, would clearly be within the jurisdiction of a Court of Equity, the Crown had a right to come into that Court and file an information for an account.

By 5 & 6 Vic. ch. 86, certain offices on the Revenue side of the Court of Exchequer were abolished, and the business therefore transacted therein

was transferred to Her Majesty's Remembrancer in the Exchequer. Sec. VIII. provides for writs and other process being made returnable without delay when necessary or proper ; and Sec. IX. provides that the Act shall not affect the jurisdiction of the Court of Exchequer.

By the 22 & 23 Vic. ch. 24, the office of Queen's Remembrancer was regulated and the practice and procedure on the Revenue side of the Court of Exchequer amended. In pursuance of the powers given by section 26 of this Act, general rules were framed for regulating the practice on the Revenue side of the Court. These rules are to be found at the beginning of the 6th volume "Hurlstone & Norman's Reports," and 7th volume of same Reports, 505.

The Statute 24 & 25 Vic. ch. 92, was passed "to amend the law for the collection of the stamp duties on probates, administrations, inventories, legacies, and successions." And by the 28 & 29 Vic. ch. 104, intituled "An Act to amend the procedure and practice in Crown suits in the Court of Exchequer at Westminster, and for other purposes," many changes were made in the practice of the Court of Exchequer. General Rules were published in pursuance of the authority contained in this statute, and are to be found in L. R. Exchequer, volume 1, page 389.

The jurisdiction of the Exchequer Court of Canada is conferred by sections 58 and 59 of the Supreme and Exchequer Court Act, sec. 58 being amended by sec. 18 of the Act intituled "An Act to make further provision in regard to the Supreme Court and the Exchequer Court of Canada." Section 58, as originally framed, might have had the effect of excluding from the jurisdiction of the Court a class of cases indirectly affecting the revenue which, in England, could be removed into the Court of the Exchequer and dealt with there exclusively, but on the Plea side and not the Revenue side of the Court; such as action of damages brought against revenue officers for torts alleged to have been committed in the performance of their duties. See *Cawthorn v. Campbell et al.*, 1 Anstruther, 205, n. ; *Siddon v. East*, 1 C. & J. 12 ; *Smith v. Cameron*, 9 Jur. 405 ; *Attorney-General v. Hallett*, 15 M. & W. 97 ; *Adams et al. v. Freemantle et al.*, 2 Exch. 453.

To ascertain the jurisdiction of the Exchequer Court of Canada in revenue causes and other cases in which the Crown is interested, it will be necessary to acquire a knowledge of the jurisdiction exercised in such cases by the Courts of the various Provinces. Only a brief reference can be made to this subject here.

The 34 George III., ch. 2, Upper Canada, erected

the Court of King's Bench in that Province, and gave to that Court all such powers and authorities as by the law of England were incident to a Superior Court of Civil and Criminal jurisdiction, with all rights, incidents, and privileges as at the time the Act first took effect were used, exercised, and enjoyed by any of the Superior Courts of Common Law at Westminster in England, with power to hold plea in all manner of actions, &c., as well criminal as civil, real, personal, and mixed, by such process and course as are provided by law, &c., to hear and determine all issues of law, and (except were otherwise provided) with a jury to determine all issues of fact and give judgment, and award execution in as full and ample a manner as there (1794) could be done in the Courts of Queen's Bench, Common Pleas, or in matters which regard the King's revenue by the Court of Exchequer in England.

The Statute gave to the Court of King's Bench in Upper Canada all the powers, both legal and equitable, which the Court of Exchequer in England then possessed "in matters which regard the King's revenue."

In 1849, by 12 Vic. ch. 63, the Court of Common Pleas for Upper Canada was constituted with "the same jurisdiction, powers, authorities, and privileges exercised and enjoyed by the said Court of Queen's Bench.

By 28 Vic. ch. 17, sec. 2, (passed 18th March, 1865,) it was enacted that "the Court of Chancery in Upper Canada shall have the same equitable jurisdiction in matters of revenue as the Court of Exchequer in England possesses."

This last Statute was probably passed owing to its having been decided by the late Chancellor Vankoughnet, in the case of *Miller v. The Attorney-General* (9 Grant's Reports, 558), that the Court of Chancery of Upper Canada had no right to grant relief in a matter specially regarding the revenue, and that such relief could only be obtained in the Court of Queen's Bench or Common Pleas.

"The Court of Exchequer," says the learned Chancellor in his judgment, "has long exercised an equitable jurisdiction in matters of revenue, and while the Attorney-General was proceeding by a sci. fa., or an extent on the one side of the Court, matters in equity might be shewn on the other side why the legal process should not have effect. The history of this jurisdiction is traced and its character explained in the very interesting and elaborate judgment of Pollock, C. B., in *Attorney-General v. Halling*. Much valuable information on the same subject is to be found in the case of the *Attorney-General v. Sewell* (4 M. & W. 77). A difference of opinion has prevailed in England as to the effect of the Imperial Statute, 5 Victoria, ch. 5. In the

Attorney-General v. The Corporation of London, the Master of the Rolls thought that all the equitable jurisdiction of the Court of Exchequer, as well in matters of revenue as otherwise, was by that Act taken from that Court and transferred to the Court of Chancery. Some observations favouring this view were made in the House of Lords on the hearing of the appeal in that case, as reported in 1 H. Lds., 440 ; but neither then, nor on the hearing in the Court below, was it necessary to decide that question ; and Lord Cottenham expressly reserved his opinion upon it. In the *Attorney-General v. Halling*, the learned Barons of the Exchequer Court deliberately considered the subject and came to a clear conclusion that they still retain their equitable jurisdiction in matters of revenue ; and, accordingly, in that case they exercised it. I follow this decision in preference to the view of Lord Langdale. I think it better considered, and, until overruled by a higher authority, binding ; and, moreover, the reasoning in support of it seems to me very strong. The consequence of this holding would be that the peculiar equitable jurisdiction of the Court of Exchequer in matters of revenue was not by that statute transferred to the Court of Chancery. If it was, it might be contended that under our Act, 20 Victoria, ch. 56, sec. 1, the Court of Chancery in this Province possessed the same powers as those transferred from

the Exchequer to Chancery under the Imperial Act of 5 Victoria. Even if this were so, it would not follow that the Court of Chancery here was the sole tribunal in which parties to claims by the Crown in respect of revenue could have relief, or would at all interfere if the Court of Common Law had power to do equity. The Statute 34 George III., ch. 2, which constituted the Court of King's Bench in Upper Canada, appears to me to have given to that Court all the powers which the Court of Exchequer in England than possessed in the matters which regard the 'King's revenue'; although the language of the Act, by which this power is, as I think, conveyed, is open to some criticism. The Imperial Act of 5 Victoria could not affect this jurisdiction. The matter in dispute here is one which specially regards the revenue, and in respect of which I think relief can only be obtained in the Court of Queen's Bench here, where the proceedings at law are carried on, or by petition of right. It is not for me to do more than to intimate to the plaintiff the mode of proceeding by which he may establish his equity, if any, to relief. The Court of Queen's Bench will judge of its own powers and jurisdiction and settle the form by which, if at all, its equitable aid can be invoked."

The extent of the jurisdiction in matters of revenue possessed by the Superior Courts of the Pro-

vince of Ontario was also commented on in the case of *Rastall v. The Attorney-General*, see 17, Grant 1 ; 18 Grant, 138 (same case in appeal). In that case, a bill was filed in the Court of Chancery for Ontario by two persons who entered into a recognizance for the due appearance of a person confined in gaol on a criminal charge, praying for a discharge from all liability under such recognizance on the ground that, although the recognizance was prepared as if the accused and his two sureties were to join therein, the prisoner was discharged without his acknowledgment of the recognizance being obtained. The Court of Appeals held that the Court of Chancery of Ontario had no jurisdiction over the forfeited recognizance on the ground that the estreat of a recognizance into a Court having the jurisdiction of the Exchequer as a Court of Revenue is a necessary preliminary to the exercise of either the legal or equitable jurisdiction. This case will be found of great value from the manner in which the jurisdiction of the various Courts of the Province of Ontario in revenue matters generally is discussed in the able judgment rendered.

In the Province of Quebec, the jurisdiction and practice of the various Courts are defined by the Code of Civil Procedure.

Article 28 is as follows : " The Superior Court has original jurisdiction in all suits or actions which

are not exclusively within the jurisdiction of the Circuit Court or of the Admiralty."

Article 43 provides that "Every action before the Superior Court is instituted by means of a writ of summons, in the name of the sovereign; saving the exceptions contained in this Code and other cases provided for by special laws."

Articles 1053 & 1054 relate to the jurisdiction of the Circuit Court, and are as follows:

"1053. The Circuit Court has ultimate jurisdiction to the exclusion of the Superior Court:

"1. In all suits wherein the amount or the value of the thing demanded is less than one hundred dollars, saving the exceptions contained in the following article, and such cases as fall exclusively within the jurisdiction of the Court of Vice-Admiralty:

"2. In all suits for school taxes or school fees, and all suits concerning assessments for the building or repairing of churches, parsonages, or church yards, whatever may be the amount of such suits."

"Art. 1054. The Circuit Court has original jurisdiction to the exclusion of the Superior Court, and subject to appeal:

"1. In all suits in which the sum or the value of the thing demanded amounts to or exceeds one hundred dollars, but does not exceed two hundred dollars, saving the exception contained in the second paragraph of the preceding article."

The jurisdiction given by the foregoing subsection 1 of Art. 1054, has been amended as regards the Districts of Quebec and Montreal by 34 Vic. cap. 4, sec. 8. and 35 Vic. cap. 6, sec. 25, the jurisdiction of the Circuit Court in such Districts being limited in all cases to one hundred dollars and under.

"2. In all suits for fees of office, duties, rents, revenue, or sums of money payable to the Crown, or which relate to any title to lands or tenements, to annual rents, or such like matters, whereby rights in future may be bound, even though the amount claimed be under one hundred dollars."

Art. 1058 provides that "Whenever any suit or action relates to fees of office, rights, rents, revenues, or sums of money payable to the Crown; titles to land or tenements; annual rents or other matters by which rights in future may be affected, the defendant may, before pleading to the merits, evoke the suit or action, and require it to be removed to the Superior Court in the same District for hearing and judgment."

Art. 1035 provides that "All demands for annulling letters-patent may be made by suits in the ordinary form, or by *scire-facias*, upon information brought by Her Majesty's Attorney-General or Solicitor-General, or any other officer duly authorized for that purpose."

Art. 1036—"The information is served upon the person who holds or relies upon such letters-patent, and is heard, tried, and determined in the same manner as ordinary suits."

The Supreme Courts of the Maritime Provinces have not been erected by special statutes, as in the Province of Ontario, but have been established in pursuance of instructions given to the first Governor, and with a jurisdiction determined by the terms of the Commission to the first Chief Justice, of each of these Provinces. This jurisdiction has, in most cases, been extended by Legislative enactment, and all these Courts have, from time to time, received Legislative recognition.

In New Brunswick, the extent of the Exchequer jurisdiction of the Supreme Court was discussed in the case of *The Attorney-General v. Baillie* (1 Kerr's New Brunswick Reports, p. 443). It was there decided that that Court had only the powers incident to the Court of Exchequer in England as a Court of Common Law. The Commission to the first Chief Justice of New Brunswick gave him "full powers and authority in our said Supreme Court to hear, try, and determine all pleas whatsoever, civil, criminal, and mixed, according to the laws, statutes, and customs of that part of our Kingdom of Great Britain called England, and the laws of our said Province of New Brunswick, not being

repugnant thereto, and executions of all judgments of our said Court to award, and to act and do all things which any of our Justices of either Bench or Barons of the Exchequer in England may or ought to do ; and to make such rules and orders in our said Court as shall be judged useful and convenient, and as near as may be agreeable to the rules and orders of our Courts of King's Bench, Common Pleas, and Exchequer in England."

"The general power," says C. J. Chipman in his judgment, "conferred by this Commission is 'to hear, try, and determine all pleas whatsoever, civil, criminal, and mixed.' Now, these are words pertinent and appropriate to convey common law powers, especially the term 'to try,' of which the prominent signification is, without doubt, trial by jury. . . . 'Pleas, civil, criminal, and mixed,' 'laws-statutes, and customs,' 'executions of all judgments,' are all expressions which clearly import proceedings according to the course of the common law and have no reference to the course of proceedings in the Courts of Equity. . . . The Crown has contented itself with establishing a Court with general common law powers, of which powers the Crown may avail itself as well as a subject, as need may require, and which powers the Crown has evidently deemed sufficient for the Supreme Court of a Colony to exercise. . . .

Then, it is said that this Court has actually, from the beginning of its existence, exercised the powers of the Court of Exchequer in England. But the only powers which this Court has exercised are those incident to the Court of Exchequer as a Court of Common Law. Informations of debt and intrusion, commission to find the King's debts, *scire-facias* on bonds and extents, are all proceedings on the Common Law side of the Court of Exchequer, in which the subject has opportunity to plead, according to the course of the common law, and to have issues of fact tried by a jury. Even the power to afford relief in cases of forfeited recognizances, which this Court has exercised, was sustained *expressly* on the ground, that this was a power exercised by the Barons of the Exchequer in England, in the Common Law branch of the Court. The present, as I stated at the outset, is the first instance in which it has been attempted to attribute to this Court the powers of the Court of Equity in the Exchequer Chamber. The Court has no officers nor organization fitted for the exercise of such powers. I think it is clear that it does not possess them."

In the case of *The King v. McLaughlin*, decided in Mich. T. 1 Wm. IV., but not reported, it was held that the Statute 33 Hy. VIII., ch. 39, was in force in the Province of New Brunswick. It was an application to remove the hand of the Crown

from certain lands which had been seized under an extent issued against the defendant. The points submitted on the part of the claimant were—

First. That the Statute 33, Hy. VIII., ch. 39, sec. 50, under which the proceedings in the case had been taken, did not extend to the Colonies, and therefore, property in the Colonies was not bound by the King's bond debt from the date of the bond, but only from the time that the debt became a debt of record, either by office found or by *scire-facias*,

Secondly. That if the Statute did extend in any respect to the Colonies, yet it could only make bond debts of the description mentioned in the Statute of the same effect in the Colonies as a Statute Staple of Westminster; and as a Statute Staple in such Colony could only be evidence of an existing debt to be proceeded upon in the Courts of the Province by action before any execution could issue thereon, and would not bind land in the Colonies till judgment thereon in the Colonial Court was obtained; so bond debts to the Crown could have no other effect under the Statute than to bind lands from the time they became debts in the Colonial Courts.

Saunders, C.J., said that the Colony was not to be considered as either a conquered or a ceded country, and, therefore, the Colonists at the time it was settled brought with them such parts of the

Common Law of England as was applicable to their condition. The Statute in question was in affirmation of the Common Law, and was binding in that Province. Bliss, J., was of the same opinion, and said that the Revenue Laws were made for the benefit of the country, and if the Statute of Henry VIII. was not in force in the Province, the Crown would be in a worse situation than an individual as to security for its debts. He considered that the Statute was applicable to the Colony, and that no inconvenience, but, on the contrary, great benefit would arise from its operation.

Botsford, J., said he had had doubts and a strong leaning against this Statute, but, upon consideration, he was convinced that it did apply and was in force in the Colony. He never considered Nova Scotia, of which the Province of New Brunswick was a part, in the light of a conquered country. The British right to it was founded on discovery, and was always so maintained; and the grant to Sir Wm. Alexander (in 1620) was founded on this right of discovery; therefore the English Common Law and all Statutes in amendment of the Common Law passed anterior to the settlement of the Colony were in force. The Statute in question was in amendment of the Common Law; the seventy-fourth section of it restricted the prerogative of the Crown, so that its priority in payment of debts should not take place after judgment for the subject.

Chipman, J., concurred with the rest of the Court. He considered the true principle to be as laid down by Lord Mansfield in *Lindo v. Lord Rodney*, that each Colony at its settlement took with it the Common Law and all the Statute Law applicable to its Colonial condition. It might not be a clear point as to what period of time should be deemed the time of the settlement of that Colony; the period of the restoration of Charles II., it was understood, was adopted in practice by the General Assembly of the Province at its first session as the period anterior to which all Acts of Parliament should be considered as extending, and the reason which had been given for this was that it was about the time of the Restoration that the Plantations began to be specially mentioned in Acts of Parliament, and the inference therefrom was that if any act after that period was intended to extend to the Plantations it would be so expressed. Whatever, however, might be construed to be the period of Colonial settlement which limited the extension of Acts of Parliament to this Province, the present Statute of Henry VIII., passed in the middle of the fifteenth century, was clearly anterior to any period which could be assumed for this purpose, and the only question must be whether the Statute itself was applicable to our Colonial condition. After reciting sec. 50 of the Statute, he proceeded

to say that this was a general provision of law equally applicable in all Colonies wherein specialties were made to the King as in the Mother Country ; and the force and affect which such specialties were to have was the force and effect which a Statute Staple had at Westminster : that is, to be a matter of record and to bind the land from its date.

In Nova Scotia, a different conclusion has been come to with respect to the Statute. It was there decided, in the case of *Uniacke v. Dickson, et. al.* (James' Reports, p. 287), that the Statutes 33 Henry VIII., ch. 39, and 13 Elizabeth, ch. 4, were not in force in that Province. The Judges in this case, while agreeing with the Judges who decided the case of *The King v. McLaughlin*, in the general principle that only such parts of the Statute law will be received as are obviously applicable to the Colony, held that these Statutes were not applicable to the Colony of Nova Scotia, and, therefore, should not be considered in force in that Province. The judgments delivered in the case will amply repay careful perusal.

By the Revised Statutes of Nova Scotia, 1873, fourth series, ch. 89, sec. 4, it is enacted that " The Supreme Court shall have, within this Province, the same powers as are exercised by the Courts of Queen's Bench, Common Pleas, Chancery, and Exchequer in England."

No similar provision, so far as the writer is aware, has been made with reference to the Courts of the other Maritime Provinces.

It is difficult to obtain satisfactory information with regard to the jurisdiction of the Supreme Court of Prince Edward Island. Mr. Patterson, the first Governor of the Island, by his commission was authorized to erect all necessary Courts of Judicature, and by his instructions was directed to consult with the Chief Justice of the Island as to the measures proper to be pursued for the purpose. The Commission of the Chief Justice (a copy of which the writer has been unable to find) no doubt defined the extent of the jurisdiction to be enjoyed by his Court in somewhat similar terms to those used in the Commission to Chief Justice Ludlow, of New Brunswick. It is evident, however, that Courts were established by Mr. Patterson in conjunction with the Chief Justice without delay ; for the first Act passed by the first Assembly of the Island (convened in 1773) was one rendering valid all manner of process and proceedings in the several Courts of Judicature within the Island, from the first day of May, 1769, to the then present Assembly.

By the Statute of Canada, 31 Vic. ch. 6 (an Act respecting the Customs), it is provided (sec. 102) that, "If the prosecution to recover any penalty or

forfeiture imposed by this Act, or by any other law relating to the Customs, or to trade or navigation, is brought in any Superior Court of Law in either of the Provinces of Ontario, Nova Scotia, or New Brunswick, it shall be heard and determined as prosecutions for penalties and forfeitures are heard and determined in Her Majesty's Court of Exchequer in England, in so far as may be consistent with the established course and practice of the Court in which the proceeding is instituted, and with any law relating to the procedure in such Province, in suits instituted on behalf of the Crown in matters relating to the Revenue ; and any such practice and law shall apply to prosecutions for the recovery of forfeitures and penalties under this Act, in whatever Court they are instituted, so far as they can be applied thereto consistently with this Act, and the venue in any such case may be laid in any county in the Province in which the proceeding is had, without alleging that the offence was there committed."

In Manitoba, an Act (38 Vic. ch. 12) was passed in July, 1874, defining the jurisdiction and powers of the Court of Queen's Bench of that Province. It is intituled "An Act respecting the Court of Queen's Bench in Manitoba." The first two sections are as follows :

" I. The Court of Queen's Bench in Manitoba shall decide and determine all matters of controversy relative to property and civil rights, according to the laws existing or established and being in England, as such were, existed and stood on the fifteenth day of July, one thousand eight hundred and seventy, so far as the same can be made applicable to matters relating to property and civil rights in this Province ; and all matters relative to testimony and legal proof in the investigation of fact, and the forms thereof, and the practice and procedure in the Court of Queen's Bench and the County Courts in Manitoba, shall be regulated and governed by the rules of evidence, and the practice and procedure as they were, existed and stood in England on the day and in the year aforesaid, except as the said laws and the said rules of evidence, and the said practice and procedure, and the forms thereof, may have been already changed or altered, or shall hereafter be changed or altered by any Act or Acts of the Legislature of Manitoba already passed, or that shall hereafter be passed, or by any rule or rules, order or orders of Court, lawfully made, or that shall hereafter be made : *Provided always*, that nothing herein contained shall affect any civil right, lawfully acquired or existing under the laws of Assiniboia on the day and in the year aforesaid."

“II. The said Court of Queen’s Bench, being a Court of Record and possessing original and appellate jurisdiction, shall possess and exercise all such powers and authorities as by the laws of England are incident to a Superior Court of Record of Civil and Criminal jurisdiction, in all matters, civil and criminal, whatsoever, and shall have, use, enjoy and exercise all the rights, incidents, and privileges as fully to all intents and purposes as the same were on the day and in the year aforesaid possessed, used, exercised, and enjoyed by any of Her Majesty’s Superior Courts of Common Law, at Westminster, or by the Court of Chancery, at Lincoln’s Inn, in England.”

And Sec. VII. provides that “The said Court of Queen’s Bench shall possess the same powers, authorities and jurisdiction as the Court of Chancery in England possessed on the fifteenth day of July, one thousand eight hundred and seventy.”

In the Province of British Columbia, the English law was declared in force on 19th November, 1858, by Proclamation having the force of law. After the Union of British Columbia and Vancouver Island, this Proclamation was repealed by an Ordinance passed on the sixth of March, 1867, intituled “An Ordinance to assimilate the general application of English Law,” by which it is provided that “From and after the passing of this

Ordinance the Civil and Criminal laws of England as the same existed on the 19th day of November, 1858" (saving as modified by past legislation of British Columbia and Vancouver Island), "and so far as the same are not, from local circumstances, inapplicable, are and shall be in force in all parts of the Colony of British Columbia."

On the 8th June, 1859, by Proclamation issued under the public seal of the Colony, the Supreme Court of Civil Justice of British Columbia was constituted with "complete cognizance of all pleas whatsoever," and with "jurisdiction in all cases, civil as well as criminal, arising within the said Colony of British Columbia;" and the present Chief Justice of British Columbia, who, by commission under the Royal signet and sign manual, had been appointed to be a Judge in the said Colony with full powers and authority to hold Courts of Judicature and to administer justice according to the laws at the date of the said commission in force, or which might thereafter be in force in the said Colony, was declared the Judge of the said Court.

By an Order of the Queen in Council, dated 4th April, 1856, the Supreme Court of Civil Justice of the Colony of Vancouver Island was constituted.

By "The Vancouver Island Civil Procedure Act, 1861;" "The Common Law Procedure Act, 1852," (excepting secs. 104 to 115, both inclusive); "The

Common Law Procedure Act, 1854 ;" "The Common Law Procedure Act, 1860 ;" and the Rules of Practice and Pleading made in pursuance of the said Acts, or either of them, were in future to regulate the practice and procedure of the said Supreme Court of Civil Justice of Vancouver Island in all actions and proceedings at law ; and the several statutory enactments regulating the practice, pleadings, and procedure of the High Court of Chancery in force on the 14th day of February, 1860, and the several Orders and Regulations in force in the said High Court on the said 14th day of February, 1860, were to regulate the proceedings of the Supreme Court of Civil Justice sitting in equity.

After the Union of British Columbia proper and Vancouver Island, an Ordinance was passed, dated 1st March, 1869, altering the names of the Supreme Courts therein to "The Supreme Court of the Mainland of British Columbia" and "The Supreme Court of Vancouver Island" respectively ; and it was also provided that these two Courts should merge into one Supreme Court, to be called "The Supreme Court of British Columbia," upon a vacancy being created by the death, resignation or otherwise of either of the then two Chief Justices.

On the 9th March, 1869, an Ordinance was passed repealing the "Vancouver Island Civil Proce-

dure Act, 1861," and declaring that the "Common Law Procedure Act, 1852" (excepting secs. 104 and 115, both inclusive); "The Common Law Procedure Act, 1854;" "The Common Law Procedure Act, 1860;" and the Rules of Practice and Pleading made in pursuance of the said Acts, or either of them, should, as far as practicable, and except as modified by General Orders afterwards made, regulate the practice and procedure of each and every of the Superior Courts of the Colony in all actions and proceedings at law; and that the several statutory enactments regulating the practice, pleadings, and procedure of the High Court of Chancery in force on the 14th February, 1860, and the several Orders and Regulations in force in the said High Court on the said 14th February, 1860, should, as far as practicable, and except when altered by General Orders of the Courts of the Colony afterwards made, regulate the proceedings of the said Courts sitting in equity.

On the 22nd April, 1870, an Ordinance was passed declaring that the merger of the Supreme Court of the Mainland of British Columbia and of the Supreme Court of Vancouver Island into the Supreme Court of British Columbia should be deemed and taken for all purposes whatsoever to have taken place as from the 29th day of March, A.D. 1870.

On the 21st February, 1873, the Legislature of British Columbia passed "An Act to provide for the institution of suits against the Crown by Petition of Right, and respecting procedure in Crown suits." By this Act, the practice and procedure in Crown cases was assimilated to the practice and procedure in cases between subject and subject.

PETITIONS OF RIGHT.

By section 4 of "The Petition of Right Act, 1876," exclusive original cognizance of Petitions of Right is conferred upon the Exchequer Court of Canada ; and by sec. 13 of the same Act, it is provided that "All the provisions of 'The Supreme and Exchequer Court Act,' not inconsistent with this Act, shall extend and apply to the jurisdiction by this Act conferred in like manner as if such jurisdiction had been conferred on the Exchequer Court by the fifty-eighth section of the said Act."

This Act repeals the Petition of right Act of 1875, and is more extensive in its provisions. It is modelled after and is in many respects similar to the English Act 23 & 24 Vic. ch. 34, which is intituled "An Act to amend the law relating to Petitions of Right, to simplify the proceedings, and to make provision for the costs thereof."

In England, where a right was sought to be established against the Crown, the course prescribed

by the Common Law was to address a petition to the King in one of his Courts of Record, praying that the conflicting claims of the Crown and the petitioner might be duly examined. As the prayer of this petition was grantable *ex debito justitiæ*—probably it came within Magna Charta *nulli vendemus, nulli negabimus aut differemus justitiam vel rectum*—it was called a Petition of *Right*, and was in the nature of an action against the King, or of a writ of right for the party, though chattels real, or personal debts, or unliquidated damages, might be recovered under it. By our Petition of Right Act, 1876, it is provided that nothing in the Act contained shall give to the subject any remedy against the Crown in any case in which he would not have been entitled to such remedy in England under similar circumstances by the laws in force there prior to the passing of the Imperial Statute 23 & 24 Vic. ch. 34.

Some of the cases in which this remedy by Petition of Right was granted before the passing of this last-mentioned Statute will be found in 6 Manning & Granger's Reports, page 251, note (a).

It has been held that a Petition of Right will not lie to recover compensation for a wrongful act done by a servant of the Crown in the supposed performance of his duty (*Tobin v. Regina*, 16 C.B. N.S., 310); nor for a claim founded upon tort, on

the ground that the Crown can do no wrong (*ibid*). Erle, C.J., in his judgment (page 355) reviews many of the authorities shewing where the Petition of Right will and where it will not lie. See also the judgment of C. J. Cockburn in the case of *Feathers v. The Queen*; 12 L.T.N.S., p. 117. But a Petition of Right will lie for a breach of contract resulting in unliquidated damages (*Thomas v. The Queen*, L.R. 10, Q. B. 31); and a trust as well as a contract may be enforced against the Crown. But in the case of *Holmes v. The Queen*, 2 J. & H. 527, a Petition of Right in the nature of a suit against the Crown in respect of lands in this country failed, it having been held that the English Court of Chancery had no jurisdiction to enforce a trust of lands situated here. The soundness of this decision has, however, been questioned.

In 1872, the Legislature of the Province of Ontario passed an Act (35 Vic. ch. 13) intituled "An Act to provide for the institution of suits against the Crown by Petition of Right and respecting procedure in Crown Suits." This Act is very similar to the English Act, and also to the Dominion Act of 1876. Under it there are to be found no reported decisions of any importance, except the case of *The Canada Central R. W. v. The Queen*, to be found in 20 Grant, p. 273, which case is valuable for the information respecting the procedure

by Petition of Right contained in the able judgment delivered by the Honourable Mr. Justice Strong, of the Supreme Court of Canada, then one of the Vice-Chancellors of Ontario.

To the practitioner in the Exchequer Court of Canada "Manning's Exchequer Practice," a somewhat scarce but very valuable work, will be almost indispensable. Forms and Rules are there given which will still be found applicable in certain cases.

The British North America Act, 1867, and the Acts amending it, as the Acts upon the judicial construction of which so many constitutional questions may hereafter depend, have been added for the purpose of more ready reference. Without them, this Manual could hardly have been considered complete.

BRITISH NORTH AMERICA ACT,
1867.

ANNO TRICESIMO

VICTORIÆ REGINÆ.

— ∞ —
CAP. III.
— ∞ —

AN ACT

FOR THE UNION OF CANADA, NOVA SCOTIA, AND NEW
BRUNSWICK, AND THE GOVERNMENT THEREOF ;
AND FOR PURPOSES CONNECTED THEREWITH.

[29th March, 1867.]

- SECTION** 1. Short Title.
2. Application of Provisions referring to the Queen.
 3. Declaration of Union.
 4. Construction of subsequent provisions of Act.
 5. Four Provinces.
 6. Provinces of Ontario and Quebec.
 7. Provinces of Nova Scotia and New Brunswick.
 8. Decennial census.
 9. Declaration of Executive power in the Queen.
 10. Application of provisions referring to Governor-General.
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WHEREAS, the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their desire to be federally united into one Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in principle to that of the United Kingdom :

AND WHEREAS, such a Union would conduce to the welfare of the Provinces and promote the interests of the British Empire :

AND WHEREAS, on the establishment of the Union by authority of Parliament, it is expedient, not only that the Constitution of the Legislative authority in the Dominion be provided for, but also that the nature of the Executive Government therein be declared :

AND WHEREAS, it is expedient that provision be made for the eventual admission into the Union of other parts of British North America :

Be it therefore enacted and declared by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows :

I.—PRELIMINARY.

1. **Short Title.**—This Act may be cited as the British North America Act, 1867.

2. **Application of provisions referring to the Queen.**—The provisions of this Act referring to Her Majesty the Queen extend also to the heirs and successors of Her Majesty, Kings and Queens of the United Kingdom of Great Britain and Ireland.

II.—UNION.

3. **Declaration of Union.**—It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, to declare by Proclamation that, on and after a day therein appointed, not being more than six months after the passing of this Act, the Provinces of Canada, Nova Scotia and New Brunswick shall form and be one Dominion under the name of Canada ; and on and after that day those three Provinces shall form and be one Dominion under that name accordingly.

4. **Construction of subsequent Provisions of Act.**—The subsequent provisions of this Act shall, unless it is otherwise expressed or implied, commence and have effect on and after the Union, that is to say, on and after the day appointed for the Union taking effect in the Queen's Proclamation ; and in the same provisions, unless it is otherwise expressed or implied, the name Canada shall be taken to mean Canada as constituted under this Act.

5. **Four Provinces.**—Canada shall be divided into four Provinces, named Ontario, Quebec, Nova Scotia, and New Brunswick.

6. **Provinces of Ontario and Quebec.**—The parts of the Province of Canada (as it exists at the passing of this Act) which formerly constituted respectively the

Provinces of Upper Canada and Lower Canada shall be deemed to be severed, and shall form two separate Provinces. The part which formerly constituted the Province of Upper Canada shall constitute the Province of Ontario ; and the part which formerly constituted the Province of Lower Canada shall constitute the Province of Quebec.

7. Provinces of Nova Scotia and New Brunswick.—The Provinces of Nova Scotia and New Brunswick shall have the same limits as at the passing of this Act.

8. Decennial Census.—In the general census of the population of Canada which is hereby required to be taken in the year one thousand eight hundred and seventy-one, and in every tenth year thereafter, the respective populations of the four Provinces shall be distinguished.

III.—EXECUTIVE POWER.

9. Declaration of Executive Power in the Queen.—The Executive Government and authority of and over Canada is hereby declared to continue and be vested in the Queen.

10. Application of Provisions referring to the Governor-General.—The provisions of this Act referring to the Governor-General extend and apply to the Governor-General for the time being of Canada, or other the Chief Executive Officer or Administrator for the time being carrying on the Government of Canada on behalf and in the name of the Queen, by whatever title he is designated.

11. Constitution of Privy Council of Canada.—There shall be a Council to aid and advise in the Government of Canada, to be styled the Queen's Privy Council for Canada ; and the persons who are to be members of the Council shall be from time to time chosen and summoned by the Governor-General and sworn in as Privy Councillors, and members thereof may be from time to time removed by the Governor-General.

12. All powers under Acts to be exercised by Governor-General with advice of Privy Council or alone.—All powers, authorities, and functions which under any Act of the Parliament of Great Britain, or

of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, Canada, Nova Scotia or New Brunswick, are at the Union vested in or exerciseable by the respective Governors or Lieutenant-Governors of those Provinces, with the advice, or with the advice and consent, of the respective Executive Councils thereof, or in conjunction with those Councils, or with any number of members thereof, or by those Governors or Lieutenant-Governors individually, shall, as far as the same continue in existence and capable of being exercised after the Union in relation to the Government of Canada, be vested in and exerciseable by the Governor-General, with the advice or with the advice and consent of or in conjunction with the Queen's Privy Council for Canada, or any members thereof, or by the Governor-General individually, as the case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland) to be abolished or altered by the Parliament of Canada.

13. Application of provisions referring to Governor-General in Council.—The provisions of this Act referring to the Governor-General in Council shall be construed as referring to the Governor-General acting by and with the advice of the Queen's Privy Council for Canada.

14. Power to Her Majesty to authorize Governor-General to appoint Deputies.—It shall be lawful for the Queen, if Her Majesty thinks fit, to authorize the Governor-General from time to time to appoint any person or any persons jointly or severally to be his Deputy or Deputies within any part or parts of Canada, and in that capacity to exercise during the pleasure of the Governor-General such of the powers, authorities, and Functions of the Governor-General as the Governor-General deems it necessary or expedient to assign to him or them, subject to any Limitations or directions expressed or given by the Queen; but the appointment of such a deputy or deputies, shall not effect the exercise by the Governor-General himself of any power, authority, or function.

15. Command of armed forces to continue to be vested in the Queen.—The Commander-in-Chief of the land and naval militia, and of all naval and military forces, of and in Canada, is hereby declared to continue and be vested in the Queen.

16. The seat of Government of Canada.—Until the Queen otherwise directs the Seat of Government of Canada shall be Ottawa.

IV.—LEGISLATIVE POWER.

17. Constitution of Parliament.—There shall be one Parliament for Canada, consisting of the Queen, an Upper House, styled the Senate, and the House of Commons.

18. Privileges &c., of Houses.—The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons and by the members thereof respectively shall be such as are from time to time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the members thereof.

19. First Session of the Parliament of Canada.—The Parliament of Canada shall be called together not later than six months after the Union.

20. Yearly Session of the Parliament of Canada.—There shall be a Session of the Parliament of Canada once at least in every year, so that twelve months shall not intervene between the last sitting of the Parliament in one session and its first sitting in the next session.

SENATE.

21. Number of Senators.—The Senate shall, subject to the provisions of this Act, consist of seventy-two members, who shall be styled Senators.

22. Representation of Provinces in Senate.—In relation to the Constitution of the Senate, Canada shall be deemed to consist of three divisions—

1. Ontario ;
2. Quebec ;
3. The Maritime Provinces, Nova Scotia and New Brunswick ; which three divisions shall (subject to the provisions of this Act) be equally represented in the Senate as follows : Ontario by twenty-four Senators ; Quebec by twenty-four Senators ; and the Maritime Provinces by twenty-four Senators, twelve thereof representing Nova Scotia, and twelve thereof representing New Brunswick.

In the case of Quebec each of the twenty-four Senators representing that Province shall be appointed for one of the twenty-four electoral divisions of Lower Canada specified in schedule A, to chapter one of the Consolidated Statutes of Canada.

23. Qualifications of Senator.—The qualifications of a Senator shall be as follows :—

- (1.) He shall be of the full age of thirty years :
- (2.) He shall either be a natural born subject of the Queen, or a subject of the Queen naturalized by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of one of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the Union, or of the Parliament of Canada after the Union :
- (3.) He shall be legally or equitably seized as of freehold for his own use and benefit of lands or tenements held in free and common socage or seized or possessed for his own use and benefit of lands or tenements held in franc-allevu or in roture, within the Province for which he is appointed, of the value of four thousand dollars, over and above all rents, dues, debts, charges, mortgages, and incumbrances due or payable out of or charged on or affecting the same :
- (4.) His real and personal property shall be together worth four thousand dollars over and above his debts and liabilities :
- (5.) He shall be resident in the Province for which he is appointed :
- (6.) In the case of Quebec he shall have his real property qualification in the electoral division for which he is appointed, or shall be resident in that division.

24. Summons of Senator.—The Governor-General shall from time to time, in the Queen's name, by instrument under the Great Seal of Canada, summon qualified persons to the Senate ; and subject to the provisions of this Act, every person so summoned shall become and be a member of the Senate and a Senator.

25. Summons of first body of Senators.—Such persons shall be first summoned to the Senate as the Queen by Warrant under Her Majesty's Royal Sign Manual thinks fit to approve, and their names shall be inserted in the Queen's Proclamation of Union.

26. Addition of Senators in certain cases.—If at any time on the recommendation of the Governor-General the Queen thinks fit to direct that three or six members be added to the Senate, the Governor-General may by summons to three or six qualified persons (as the case may be), representing equally the three divisions of Canada, add to the Senate accordingly.

27. Reduction of Senate to normal number.—In case of such addition being at any time made the Governor-General shall not summon any person to the Senate, except on a further like direction by the Queen on the like recommendation, until each of the three divisions of Canada is represented by twenty-four Senators and no more.

28. Maximum number of Senators.—The number of Senators shall not at any time exceed seventy-eight.

29. Tenure of place in Senate.—A Senator shall, subject to the provisions of this Act, hold his place in the Senate for life.

30. Resignation of place in Senate.—A Senator may, by writing under his hand, addressed to the Governor-General, resign his place in the Senate, and thereupon the same shall be vacant.

31. Disqualification of Senators.—The place of a Senator shall become vacant in any of the following cases :

- (1). If for two consecutive Sessions of the Parliament he fails to give his attendance in the Senate :
- (2). If he takes an Oath or makes a declaration or acknowledgment of allegiance, obedience or adherence to a

Foreign Power, or does an Act whereby he becomes a subject or citizen, or entitled to the rights or privileges of a subject or citizen of a foreign Power :

- (3). If he is adjudged bankrupt or insolvent, or applies for the benefit of any law relating to insolvent debtors, or becomes a public defaulter :
- (4). If he is attainted of treason, or convicted of felony or of any infamous crime :
- (5). If he ceases to be qualified in respect of property or of residence ; provided that a Senator shall not be deemed to have ceased to be qualified in respect of residence by reason only of his residing at the Seat of the Government of Canada while holding an office under that Government requiring his presence there.

32. Summons on vacancy in Senate.—When a vacancy happens in the Senate, by resignation, death or otherwise, the Governor General shall, by summons to a fit and qualified person, fill the vacancy.

33. Questions as to qualifications and vacancies in Senate.—If any question arises respecting the Qualification of a Senator or a vacancy in the Senate the same shall be heard and determined by the Senate.

34. Appointment of Speaker of Senate.—The Governor General may from time to time, by instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his stead.

35. Quorum of Senate.—Until the Parliament of Canada otherwise provides, the presence of at least fifteen Senators, including the Speaker, shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

36. Voting in Senate.—Questions arising in the Senate shall be decided by a majority of voices, and the Speaker shall in all cases have a vote, and when the voices are equal the decision shall be deemed to be in the negative.

THE HOUSE OF COMMONS.

37. Constitution of House of Commons in Canada.—The House of Commons shall, subject to the

provisions of this Act, consist of one hundred and eighty-one Members, of whom eighty-two shall be elected for Ontario, sixty-five for Quebec, nineteen for Nova Scotia, and fifteen for New Brunswick.

38. Summoning of the House of Commons.—The Governor General shall from time to time, in the Queen's name, by instrument under the Great Seal of Canada, summon and call together the House of Commons.

39. Senators not to sit in House of Commons.—A Senator shall not be capable of being elected or of sitting or voting as a member of the House of Commons.

40. Electoral Districts of the four Provinces.—Until the Parliament of Canada otherwise provides, Ontario, Quebec, Nova Scotia, and New Brunswick shall, for the purposes of the election of Members to serve in the House of Commons, be divided into Electoral Districts as follows :—

1.—ONTARIO.

Ontario shall be divided into the counties, ridings of counties, cities, parts of cities, and towns enumerated in the First Schedule to this Act, each whereof shall be an Electoral District, each such District as numbered in that Schedule being entitled to return one member.

2.—QUEBEC.

Quebec shall be divided into sixty-five Electoral Districts, composed of the sixty-five Electoral Divisions into which Lower Canada is at the passing of this Act divided under chapter two of the Consolidated Statutes of Canada, chapter seventy-five of the Consolidated Statutes for Lower Canada, and the Act of the Province of Canada of the twenty-third year of the Queen, chapter one, or any other Act amending the same in force at the Union, so that each such Electoral Division shall be for the purposes of this Act an Electoral District entitled to return one member.

3.—NOVA SCOTIA.

Each of the eighteen counties of Nova Scotia shall be an Electoral District. The County of Halifax shall be entitled

to return two members, and each of the other counties one member.

4.—NEW BRUNSWICK.

Each of the fourteen counties into which New Brunswick is divided, including the city and county of St. John, shall be an Electoral District. The City of St. John shall also be a separate Electoral District. Each of those fifteen Electoral Districts shall be entitled to return one member.

41. Continuance of existing Election Laws until Parliament of Canada otherwise provides.

—Until the Parliament of Canada otherwise provides, all laws in force in the several Provinces at the Union relative to the following matters or any of them, namely,—the qualifications and disqualifications of persons to be elected or to sit or vote as Members of the House of Assembly or Legislative Assembly in the several Provinces, the voters at elections of such Members, the oaths to be taken by voters, the returning officers, their powers and duties, the proceedings at elections, the periods during which elections may be continued, the trial of controverted elections, and proceedings incident thereto, the vacating of seats of Members, and the execution of new writs in case of seats vacated otherwise than by dissolution,—shall respectively apply to elections of Members to serve in the House of Commons for the same several Provinces.

Provided that, until the Parliament of Canada otherwise provides, at any election for a Member of the House of Commons for the District of Algoma, in addition to persons qualified by the law of the Province of Canada to vote, every male British subject, aged twenty-one years or upwards, being a householder, shall have a vote.

42. Writs for first election.—For the first election of Members to serve in the House of Commons the Governor-General shall cause writs to be issued by such person, in such form, and addressed to such returning officers as he thinks fit.

The person issuing writs under this section shall have the like powers as are possessed at the Union by the officers charged with the issuing of writs for the election of Members to serve in the respective House of Assembly or Legislative

Assembly of the Province of Canada, Nova Scotia, or New Brunswick; and the returning officers to whom writs are directed under this section shall have the like powers as are possessed at the Union by the officers charged with the returning of writs for the election of Members to serve in the same respective House of Assembly or Legislative Assembly.

43. As to Casual Vacancies.—In case a vacancy in the representation in the House of Commons of any Electoral District happens before the meeting of the Parliament, or after the meeting of the Parliament before provision is made by the Parliament in this behalf, the provisions of the last foregoing section of this Act shall extend and apply to the issuing and returning of a writ in respect of such vacant District.

44. As to the Election of Speaker of House of Commons.—The House of Commons on its first assembling after a General Election shall proceed with all practicable speed to elect one of its Members to be Speaker.

45. As to filling up Vacancy in Office of Speaker.—In case of a vacancy happening in the office of Speaker by death, resignation, or otherwise, the House of Commons shall with all practicable speed proceed to elect another of its members to be Speaker.

46. Speaker to preside.—The Speaker shall preside at all meetings of the House of Commons.

47. Provision in case of absence of Speaker.—Until the Parliament of Canada otherwise provides, in case of the absence for any reason of the Speaker from the chair of the House of Commons for a period of forty-eight consecutive hours, the House may elect another of its Members to act as Speaker, and the Member so elected shall during the continuance of such absence of the Speaker have and execute all the powers, privileges, and duties of Speaker.

48. Quorum of House of Commons.—The presence of at least twenty Members of the House of Commons shall be necessary to constitute a meeting of the House for the exercise of its powers; and for that purpose the Speaker shall be reckoned as a Member.

49. Voting in House of Commons.—Questions

arising in the House of Commons shall be decided by a majority of voices other than that of the Speaker, and when the voices are equal, but not otherwise, the Speaker shall have a vote.

50. Duration of House of Commons.—Every House of Commons shall continue for five years from the day of the return of the writs for choosing the House (subject to be sooner dissolved by the Governor-General), and no longer.

51. Decennial Re-adjustment of Representation.—On the completion of the census in the year one thousand eight hundred and seventy-one, and of each subsequent decennial census, the representation of the four Provinces shall be re-adjusted by such authority, in such manner, and from such time, as the Parliament of Canada from time to time provides, subject and according to the following rules :—

- (1.) Quebec shall have the fixed number of sixty-five Members :
- (2.) There shall be assigned to each of the other Provinces such a number of Members as will bear the same proportion to the number of its population (ascertained at such census) as the number sixty-five bears to the number of the population of Quebec (so ascertained) :
- (3.) In the computation of the number of Members for a Province a fractional part not exceeding one-half of the whole number requisite for entitling the Province to a Member shall be disregarded ; but a fractional part exceeding one-half of that number shall be equivalent to the whole number :
- (4.) On any such re-adjustment the number of Members for a Province shall not be reduced unless the proportion which the number of the population of the Province bore to the number of the population of aggregate Canada at the then last preceding re-adjustment of the number of Members for the Province is ascertained at the then latest census to be diminished by one-twentieth part or upwards :
- (5.) Such re-adjustment shall not take effect until the termination of the then existing Parliament.

52. Increase of number of House of Commons.—The number of Members of the House of Commons may be from time to time increased by the Parliament of Canada, provided the proportionate representation of the Provinces prescribed by this Act is not thereby disturbed.

MONEY VOTES ; ROYAL ASSENT.

53. Appropriation and Tax Bills.—Bills for appropriating any part of the public revenue, or for imposing any tax or impost, shall originate in the House of Commons.

54. Recommendation of money votes.—It shall not be lawful for the House of Commons to adopt or pass any vote, resolution, address, or bill for the appropriation of any part of the public revenue, or of any tax or impost, to any purpose that has not been first recommended to that House by message of the Governor-General in the session in which such vote, resolution, address, or bill is proposed.

55. Royal assent to Bills, &c.—Where a bill passed by the Houses of the Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to the provisions of this Act and to Her Majesty's instructions, either that he assents thereto in the Queen's name, or that he withholds the Queen's assent, or that he reserves the Bill for the signification of the Queen's pleasure.

56. Disallowance by Order in Council of Act assented to by Governor-General.—Where the Governor-General assents to a Bill in the Queen's name, he shall by the first convenient opportunity send an authentic copy of the Act to one of Her Majesty's Principal Secretaries of State, and if the Queen in Council within two years after receipt thereof by the Secretary of State thinks fit to disallow the Act, such disallowance (with a certificate of the Secretary of State of the day on which the Act was received by him), being signified by the Governor-General, by speech or message to each of the Houses of the Parliament or by proclamation, shall annul the Act from and after the day of such signification.

57. Signification of the Queen's pleasure on Bill reserved.—A Bill reserved for the signification of the

Queen's pleasure shall not have any force unless and until within two years from the day on which it was presented to the Governor-General for the Queen's assent, the Governor-General signifies, by speech or message to each of the Houses of Parliament or by proclamation, that it has received the assent of the Queen in Council.

An entry of every such speech, message, or proclamation shall be made in the Journal of each House, and a duplicate thereof duly attested shall be delivered to the proper officer to be kept among the Records of Canada.

5.—PROVINCIAL CONSTITUTIONS.

Executive Power.

58. Appointment of Lieutenant-Governors.—

For each Province there shall be an officer, styled the Lieutenant-Governor, appointed by the Governor-General in Council by instrument under the Great Seal of Canada.

59. Tenure of office of Lieutenant-Governor.

A Lieutenant-Governor shall hold office during the pleasure of the Governor-General; but any Lieutenant-Governor appointed after the commencement of the first session of the Parliament of Canada shall not be removable within five years from his appointment, except for cause assigned, which shall be communicated to him in writing within one month after the order for his removal is made, and shall be communicated by message to the Senate and to the House of Commons within one week thereafter if the Parliament is then sitting, and if not then within one week after the commencement of the next session of the Parliament.

60. Salaries of Lieutenant-Governor.—The salaries of the Lieutenant-Governor shall be fixed and provided by the Parliament of Canada.

61. Oaths, &c., of Lieutenant-Governor.—

Every Lieutenant-Governor shall, before assuming the duties of his office, make and subscribe before the Governor-General or some person authorized by him, oaths of allegiance and office similar to those taken by the Governor-General.

62. Application of provisions referring to Lieutenant-Governor.—The provisions of this Act re-

ferring to the Lieutenant-Governor extend and apply to the Lieutenant-Governor for the time being of each Province or other the Chief Executive Officer or Administrator for the time being carrying on the Government of the Province, by whatsoever title he is designated.

63. Appointment of Executive Officers for Ontario and Quebec.—The Executive Council of Ontario and Quebec shall be composed of such persons as the Lieutenant-Governor from time to time thinks fit, and in the first instance of the following officers, namely,—the Attorney-General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, with, in Quebec, the Speaker of the Legislative Council and the Solicitor-General.

64. Executive Government of Nova Scotia and New Brunswick.—The Constitution of the Executive authority in each of the Provinces of Nova Scotia and New Brunswick shall, subject to the provisions of this Act, continue as it exists at the Union until altered under the authority of this Act.

65. Powers to be exercised by Lieutenant-Governor of Ontario or Quebec with advice or alone.—All powers, authorities, and functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, or Canada, were or are before or at the Union vested in or exercisable by the respective Governors or Lieutenant-Governors of those Provinces, with the advice, or with the advice and consent, of the respective Executive Councils thereof, or in conjunction with those Councils or with any number of members thereof, or by those Governors or Lieutenant-Governors individually, shall, as far as the same are capable of being exercised after the Union in relation to the Government of Ontario and Quebec respectively, be vested in and shall or may be exercised by the Lieutenant-Governor of Ontario and Quebec respectively, with the advice or with the advice and consent of or in conjunction with the respective Executive Councils or any Members thereof, or by the Lieutenant-Governor individually, as the case requires, sub-

ject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland), to be abolished or altered by the respective Legislatures of Ontario and Quebec.

66. Application of provisions referring to Lieutenant-Governor in Council.—The provisions of this Act referring to the Lieutenant-Governor in Council shall be construed as referring to the Lieutenant-Governor of the Province acting by and with advice of the Executive Council thereof.

67. Administration in absence, &c., of Lieutenant-Governor.—The Governor-General in Council may from time to time appoint an Administrator to execute the office and functions of Lieutenant-Governor during his absence, illness, or other inability.

68. Seats of Provincial Governments.—Unless and until the Executive Government of any Province otherwise directs with respect to that Province, the seats of Government of the Provinces shall be as follows, namely,—of Ontario, the City of Toronto; of Quebec, the City of Quebec; of Nova Scotia, the City of Halifax; and of New Brunswick, the City of Fredericton.

Legislative Power.

1.—ONTARIO.

69. Legislature of Ontario.—There shall be a Legislature for Ontario consisting of the Lieutenant-Governor and of one House, styled the Legislative Assembly of Ontario.

70. Electoral Districts.—The Legislative Assembly of Ontario shall be composed of eighty-two Members, to be elected to represent the eighty-two Electoral Districts set forth in the First Schedule to this Act.

2.—QUEBEC.

71. Legislature for Quebec.—There shall be a Legislature for Quebec consisting of the Lieutenant-Governor

and of Two Houses, styled the Legislative Council of Quebec and the Legislative Assembly of Quebec.

72. Constitution of Legislative Council.—The Legislative Council of Quebec shall be composed of twenty-four Members, to be appointed by the Lieutenant Governor in the Queen's name, by instrument under the Great Seal of Quebec, one being appointed to represent each of the twenty-four electoral Divisions of Lower Canada in this Act referred to, and each holding office for the term of his life, unless the Legislature of Quebec otherwise provides under the Provisions of this Act.

73. Qualification of Legislative Councillors.—The qualifications of the Legislative Councillors of Quebec shall be the same as those of the Senators for Quebec.

74. Resignation, Disqualification, &c.—The Place of a Legislative Councillor of Quebec shall become vacant in the cases, *mutatis mutandis*, in which the place of Senator becomes vacant.

75. Vacancies.—When a vacancy happens in the Legislative Council of Quebec by resignation, death, or otherwise, the Lieutenant Governor, in the Queen's name, by instrument under the Great Seal of Quebec, shall appoint a fit and qualified person to fill the vacancy.

76. Questions as to Vacancies, &c.—If any question arises respecting the qualification of a Legislative Councillor of Quebec, or a vacancy in the Legislative Council of Quebec, the same shall be heard and determined by the Legislative Council.

77. Speaker of Legislative Council.—The Lieutenant Governor may from time to time, by instrument under the Great Seal of Quebec, appoint a member of the Legislative Council of Quebec to be Speaker thereof, and may remove him and appoint another in his stead.

78. Quorum of Legislative Council.—Until the Legislature of Quebec otherwise provides, the presence of at least ten Members of the Legislative Council, including the Speaker, shall be necessary to constitute a meeting for the exercise of its powers.

79. Voting in Legislative Council.—Questions arising in the Legislative Council of Quebec shall be decided

by a majority of voices, and the Speaker shall in all cases have a vote, and when the voices are equal the decision shall be deemed to be in the negative.

80. Constitution of Legislative Assembly of Quebec.—The Legislative Assembly of Quebec shall be composed of sixty-five members, to be elected to represent the sixty-five Electoral Divisions or Districts of Lower Canada in this Act referred to, subject to alteration thereof by the Legislature of Quebec: *Provided* that it shall not be lawful to present to the Lieutenant-Governor of Quebec for assent any bill for altering the limits of any of the Electoral Divisions or Districts mentioned in the Second Schedule to this Act, unless the second and third readings of such Bill have been passed in the Legislative Assembly with the concurrence of the majority of the members representing all those Electoral Divisions or Districts, and the assent shall not be given to such Bill unless an address has been presented by the Legislative Assembly to the Lieutenant Governor stating that it has been so passed.

3.—ONTARIO AND QUEBEC.

81. First Session of Legislatures.—The Legislatures of Ontario and Quebec respectively shall be called together not later than six months after the Union.

82 Summoning of Legislative Assemblies.—The Lieutenant-Governor of Ontario and of Quebec shall from time to time, in the Queen's name, by instrument under the Great Seal of the Province, summon and call together the Legislative Assembly of the Province.

83. Restriction on election of holders of offices.—Until the Legislature of Ontario or of Quebec otherwise provides, a person accepting or holding in Ontario or in Quebec any Office, commission, or employment permanent or temporary, at the Nomination of the Lieutenant Governor, to which an annual salary, or any fee, allowance, emolument, or profit of any kind or amount whatever from the Province is attached, shall not be eligible as a member of the Legislative Assembly of the respective Province, nor shall he sit or vote as such; but nothing in this Section shall make ineligible any person being a member of the Executive

Council of the respective Province, or holding any of the following offices, that is to say, the offices of Attorney-General, Secretary and Registrar of the Province, Treasurer of the Province, Commissioner of Crown Lands, and Commissioner of Agriculture and Public Works, and in Quebec Solicitor General, or shall disqualify him to sit or vote in the House for which he is elected, provided he is elected while holding such office.

84. Continuance of existing election Laws.—Until the Legislatures of Ontario and Quebec respectively otherwise provide, all laws which at the Union are in force in those Provinces respectively, relative to the following matters, or any of them, namely,—the qualifications and, disqualifications of persons to be elected or to sit or vote as members of the Assembly of Canada, the qualifications or disqualifications of voters, the oaths to be taken by voters, the returning officers, their powers and duties, the proceedings at elections, the periods during which such elections may be continued, and the trial of controverted elections and the proceedings incident thereto, the vacating of the seats of members, and the issuing and execution of new writs in case of seats vacated otherwise than by dissolution, shall respectively apply to elections of members to serve in the respective Legislative Assemblies of Ontario and Quebec.

Provided that until the Legislature of Ontario otherwise provides, at any election for a member of the Legislative Assembly of Ontario for the District of Algoma, in addition to persons qualified by the law of the Province of Canada to vote, every male British subject, aged twenty-one years or upwards, being a householder, shall have a vote.

85. Duration of Legislative Assemblies.—Every Legislative Assembly of Ontario and every Legislative Assembly of Quebec shall continue for four years from the day of the return of the writs for choosing the same (subject nevertheless to either the Legislative Assembly of Ontario or the Legislative Assembly of Quebec being sooner dissolved by the Lieutenant-Governor of the Province), and no longer.

86. Yearly Session of Legislature.—There shall be a session of the Legislature of Ontario and of that of

Quebec once at least in every year, so that twelve months shall not intervene between the last sitting of the Legislature in each Province in one session and its first sitting in the next session.

87. Speaker, quorum, &c.—The following provisions of this Act respecting the House of Commons of Canada shall extend and apply to the Legislative Assemblies of Ontario and Quebec, that is to say,—the provisions relating to the election of a Speaker, originally and on vacancies, the duties of the Speaker, the absence of the Speaker, the quorum, and the mode of voting, as if those provisions were here re-enacted and made applicable in terms to each such Legislative Assembly.

4.—NOVA SCOTIA AND NEW BRUNSWICK.

88. Constitutions of Legislatures of Nova Scotia and New Brunswick.—The Constitution of the Legislature of each of the Provinces of Nova Scotia and New Brunswick shall, subject to the provisions of this Act, continue as it exists at the Union until altered under the authority of this Act; and the House of Assembly of New Brunswick existing at the passing of this Act shall, unless sooner dissolved, continue for the period for which it was elected.

5.—ONTARIO, QUEBEC AND NOVA SCOTIA.

89. First elections.—Each of the Lieutenant Governors of Ontario, Quebec, and Nova Scotia shall cause writs to be issued for the first election of Members of the Legislative Assembly thereof in such form and by such person as he thinks fit, and at such time and addressed to such returning officer as the Governor General directs, and so that the first election of Member of Assembly for any Electoral District or any subdivision thereof shall be held at the same time and at the same places as the election for a Member to serve in the House of Commons of Canada for that Electoral District.

6.—THE FOUR PROVINCES.

90. Application to Legislatures of provisions respecting money votes, &c.—The following pro-

visions of this Act respecting the Parliament of Canada, namely,—the provisions relating to appropriation and tax bills, the recommendation of money votes, the assent to bills, the disallowance of Acts, and the signification of pleasure on bills reserved,—shall extend and apply to the Legislatures of the several Provinces as if those provisions were here re-enacted and made applicable in terms to the respective Provinces and the Legislatures thereof, with the substitution of the Lieutenant-Governor of the Province for the Governor General, of the Governor General for the Queen and for a Secretary of State, of one year for two years, and of the Province for Canada.

VI.—DISTRIBUTION OF LEGISLATIVE POWERS.

Powers of the Parliament.

91. **Legislative Authority of Parliament of Canada.**—It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order, and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say :

1. The public debt and property.
2. The regulation of trade and commerce.
3. The raising of money by any mode or system of taxation.
4. The borrowing of money on the public credit.
5. Postal service.
6. The census and statistics.
7. Militia, military and naval service, and defence.
8. The fixing of and providing for the salaries and allowances of civil and other officers of the Government of Canada.
9. Beacons, buoys, lighthouses, and Sable Island.

10. Navigation and shipping.
11. Quarantine, and the establishment and maintenance of marine hospitals.
12. Sea coast and inland fisheries.
13. Ferries between a Province and any British or Foreign country or between two provinces.
14. Currency and coinage.
15. Banking, incorporation of banks, and the issue of paper money.
16. Savings banks.
17. Weights and measures.
18. Bills of exchange and promissory notes.
19. Interest.
20. Legal tender.
21. Bankruptcy and insolvency.
22. Patents of invention and discovery.
23. Copyrights.
24. Indians, and lands reserved for the Indians.
25. Naturalization and aliens.
26. Marriage and divorce.
27. The Criminal Law, except the constitution of Courts of Criminal Jurisdiction, but including the procedure in criminal matters.
28. The establishment, maintenance, and management of penitentiaries.
29. Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.

Exclusive Powers of Provincial Legislatures.

92. Subjects of Exclusive Provincial Legislation.—In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say :—

1. The amendment from time to time, notwithstanding anything in this Act, of the constitution of the Province, except as regards the office of Lieutenant Governor.
2. Direct taxation within the Province in order to the raising of a Revenue for Provincial purposes.
3. The borrowing of money on the sole credit of the Province.
4. The establishment and tenure of provincial offices and the appointment and payment of provincial officers.
5. The management and sale of the public lands belonging to the Province, and of the timber and wood thereon.
6. The establishment, maintenance and management of public and reformatory prisons in and for the Province.
7. The establishment, maintenance, and management of hospitals, asylums, charities, and ~~eleemosynary~~ institutions in and for the Province, other than marine hospitals.
8. Municipal institutions in the Province.
9. Shop, saloon, tavern, auctioneer, and other licenses in order to the raising of a revenue for provincial, local, or municipal purposes.
10. Local works and undertakings, other than such as are of the following Classes,—
 - a. Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province.
 - b. Lines of steam ships between the Province and any British or Foreign Country :
 - c. Such works as, although wholly situate within the Province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the Provinces.
11. The incorporation of companies with Provincial objects.
12. The solemnization of marriage in the Province.
13. Property and civil rights in the Province.

14. The administration of justice in the Province, including the constitution, maintenance, and organization of Provincial Courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those Courts.
15. The imposition of punishment by fine, penalty, or imprisonment for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this section.
16. Generally all matters of a merely local or private nature in the Province.

Education.

93. Legislation respecting education.—In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following provisions :—

- (1.) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the Province at the union.
- (2.) All the powers, privileges, and duties at the union by law conferred and imposed in Upper Canada on the separate schools and school trustees of the Queen's Roman Catholic subjects, shall be and the same are hereby extended to the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec.
- (3.) Where in any Province a system of separate or dissentient schools exists by law at the Union or is thereafter established by the Legislature of the Province, an appeal shall lie to the Governor-General in Council from any act or decision of any Provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.
- (4.) In case any such Provincial law as from time to time seems to the Governor-General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor-General in Council on any appeal

under this section is not duly executed by the proper provincial authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section and of any decision of the Governor-General in Council under this section.

*Uniformity of Laws in Ontario, Nova Scotia, and
New Brunswick.*

94. Legislation for uniformity of laws in three Provinces.—Notwithstanding anything in this Act, the Parliament of Canada may make provision for the uniformity of all or any of the laws relative to property and civil rights in Ontario, Nova Scotia and New Brunswick, and of the procedure of all or any of the courts in those three Provinces, and from and after the passing of any Act in that behalf the power of the Parliament of Canada to make laws in relation to any matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted ; but any Act of the Parliament of Canada making provision for such uniformity shall not have effect in any Province unless and until it is adopted and enacted as law by the Legislature thereof.

Agriculture and Immigration.

95. Concurrent powers of legislation respecting agriculture, &c.—In each Province the Legislature may make laws in relation to agriculture in the Province, and to immigration into the Province ; and it is hereby declared that the Parliament of Canada may from time to time make laws in relation to agriculture in all or any of the Provinces, and to immigration into all or any of the Provinces ; and any law of the Legislature of a Province relative to agriculture or to immigration shall have effect in and for the Province as long and as far only as it is not repugnant to any Act of the Parliament of Canada.

VII.—JUDICATURE.

96. Appointment of Judges.—The Governor-General shall appoint the Judges of the Superior, District and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick.

97. Selection of Judges in Ontario, &c.—Until the laws relative to property and civil rights in Ontario, Nova Scotia and New Brunswick, and the procedure of the Courts in those Provinces, are made uniform, the Judges of the Courts of those Provinces appointed by the Governor-General shall be selected from the respective Bars of those Provinces.

98. Selection of Judges in Quebec.—The Judges of the Courts of Quebec, shall be selected from the Bar of that Province.

99. Tenure of office of Judges of Superior Courts.—The Judges of the Superior Courts shall hold office during good behaviour, but shall be removable by the Governor-General on address of the Senate and House of Commons.

100. Salaries, &c., of Judges.—The salaries, allowances, and pensions of the Judges of the Superior, District and County Courts (except the Courts of Probate in Nova Scotia and New Brunswick), and of the Admiralty Courts in cases where the Judges thereof are for the time being paid by salary, shall be fixed and provided by the Parliament of Canada.

101. General Court of Appeal, &c.—The Parliament of Canada may, notwithstanding anything in this Act, from time to time, provide for the constitution, maintenance, and organization of a General Court of Appeal for Canada, and for the establishment of any additional Courts for the better administration of the laws of Canada.

VIII.—REVENUES ; DEBTS ; ASSETS ;
TAXATION.

102. Creation of consolidated revenue fund.
—All duties and revenues over which the respective Legis-

latures of Canada, Nova Scotia, and New Brunswick before and at the Union had and have power of appropriation, except such portions thereof as are by this Act reserved to the respective Legislatures of the Provinces, or are raised by them in accordance with the special powers conferred on them by this Act, shall form one Consolidated Revenue Fund, to be appropriated for the public service of Canada in the manner and subject to the charges in this Act provided.

103. Expenses of collection, &c.—The Consolidated Revenue Fund of Canada shall be permanently charged with the costs, charges and expenses incident to the collection, management, and receipt thereof, and the same shall form the first charge thereon, subject to be reviewed and audited in such manner as shall be ordered by the Governor-General in Council until the Parliament otherwise provides.

104. Interest of Provincial public debts.—The annual interest of the public debts of the several Provinces of Canada, Nova Scotia and New Brunswick at the Union shall form the second charge on the Consolidated Revenue Fund of Canada.

105. Salary of Governor-General.—Unless altered by the Parliament of Canada, the salary of the Governor-General shall be ten thousand pounds sterling money of the United Kingdom of Great Britain and Ireland, payable out of the Consolidated Revenue Fund of Canada, and the same shall form the third charge thereon.

106. Appropriation from time to time.—Subject to the several payments by this Act charged on the Consolidated Revenue Fund of Canada, the same shall be appropriated by the Parliament of Canada for the public service.

107. Transfer of stocks, &c.—All stocks, cash, bankers' balances, and securities for money belonging to each Province at the time of the Union, except as in this Act mentioned, shall be the property of Canada, and shall be taken in reduction of the amount of the respective debts of the Provinces at the Union.

108. Transfer of property in schedule.—The public works and property of each Province enumerated in the third schedule to this Act, shall be the property of Canada.

109. Property in lands, mines, &c.—All lands, mines, minerals, and royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all sums then due or payable for such lands, mines, minerals, or royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any trusts existing in respect thereof, and to any interest other than that of the Province in the same.

110. Assets connected with Provincial debts.—All assets connected with such portions of the public debt of each Province as are assumed by that Province shall belong to that Province.

111. Canada to be liable for Provincial debts.—Canada shall be liable for the debts and liabilities of each Province existing at the Union.

112. Debts of Ontario and Quebec.—Ontario and Quebec conjointly shall be liable to Canada for the amount (if any) by which the debt of the Province of Canada exceeds at the Union Sixty-two million five hundred thousand dollars, and shall be charged with Interest at the rate of five per centum per annum thereon.

113. Assets of Ontario and Quebec.—The assets enumerated in the fourth schedule to this Act, belonging at the Union to the Province of Canada, shall be the property of Ontario and Quebec conjointly.

114. Debt of Nova Scotia.—Nova Scotia shall be liable to Canada for the amount (if any) by which its public debt exceeds at the Union eight million dollars, and shall be charged with interest at the rate of five per centum per annum thereon.

115. Debt of New Brunswick.—New Brunswick shall be liable to Canada for the amount (if any) by which its public debt exceeds at the Union seven million dollars, and shall be charged with interest at the rate of five per centum per annum thereon.

116. Payment of interest to Nova Scotia and New Brunswick.—In case the public debts of Nova Scotia and New Brunswick do not at the Union amount to eight million and seven million dollars respectively, they shall respectively receive, by half-yearly payments in advance from the Government of Canada, interest at five per centum per annum on the difference between the actual amounts of their respective debts and such stipulated amounts.

117. Provincial public property.—The several Provinces shall retain all their respective public property not otherwise disposed of in this Act, subject to the right of Canada to assume any lands or public property required for fortifications or for the defence of the country.

118. Grants to Provinces.—The following sums shall be paid yearly by Canada to the several Provinces for the support of their Governments and Legislatures :

Dollars.

Ontario.....	Eighty thousand.
Quebec.....	Seventy thousand.
Nova Scotia.....	Sixty thousand.
New Brunswick.....	Fifty thousand.

Two hundred and sixty thousand

and an annual grant in aid of each Province shall be made, equal to eighty cents per head of the population as ascertained by the census of one thousand eight hundred and sixty-one, and in the case of Nova Scotia and New Brunswick, by each subsequent decennial census until the population of each of those two Provinces amounts to four hundred thousand souls, at which rate such grant shall thereafter remain. Such grants shall be in full settlement of all future demands on Canada, and shall be paid half-yearly in advance to each Province ; but the Government of Canada shall deduct from such grants, as against any Province, all sums chargeable as interest on the public debt of that Province in excess of the several amounts stipulated in this Act.

119. Further grant to New Brunswick.—New Brunswick shall receive, by half-yearly payments in advance from Canada, for the period of ten years from the Union, an additional allowance of sixty-three thousand dollars per

annum ; but as long as the public debt of that Province remains under seven million dollars, a deduction equal to the interest at five per centum per annum on such deficiency shall be made from that allowance of sixty-three thousand dollars.

120. Form of Payments.—All payments to be made under this Act, or in discharge of liabilities created under any Act of the Provinces of Canada, Nova Scotia, and New Brunswick respectively, and assumed by Canada, shall, until the Parliament of Canada otherwise directs, be made in such form and manner as may from time to time be ordered by the Governor-General in Council.

121. Canadian manufactures, &c.—All articles of the growth, produce, or manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces.

122. Continuance of customs and excise laws.—The customs and excise laws of each Province shall, subject to the provisions of this Act, continue in force until altered by the Parliament of Canada.

123. Exportation and importation as between two Provinces.—Where customs duties are, at the Union, leviable on any goods, wares, or merchandizes in any two Provinces, those goods, wares and merchandizes may, from and after the Union, be imported from one of those Provinces into the other of them on proof of payment of the customs duty leviable thereon in the Province of exportation, and on payment of such further amount (if any) of customs duty as is leviable thereon in the Province of importation.

124. Lumber Dues in New Brunswick.—Nothing in this Act shall affect the Right of New Brunswick to levy the lumber dues provided in chapter fifteen of title three of the Revised Statutes of New Brunswick, or in any Act amending that Act before or after the Union, and not increasing the amount of such dues ; but the Lumber of any of the Provinces other than New Brunswick shall not be subject to such dues.

125. Exemption of public lands, &c.—No lands or property belonging to Canada or any Province shall be liable to taxation.

126. Provincial consolidated revenue fund.—Such portions of the duties and revenues over which the respective legislatures of Canada, Nova Scotia, and New Brunswick, had before the Union, power of appropriation, as are by this Act reserved to the respective Governments or Legislatures of the Provinces, and all duties and revenues raised by them in accordance with the special Powers conferred upon them by this Act, shall in each Province form one consolidated Revenue Fund to be appropriated for the public service of the Province.

IX.—MISCELLANEOUS PROVISIONS.

General.

127. As to Legislative Councillors of Provinces becoming Senators.—If any person being at the passing of this Act a member of the legislative Council of Canada, Nova Scotia, or New Brunswick, to whom a place in the Senate is offered, does not within thirty days thereafter, by writing under his hand addressed to the Governor-General of the Province of Canada or to the Lieutenant-Governor of Nova Scotia or New Brunswick (as the case may be), accept the same, he shall be deemed to have declined the same; and any person who, being at the passing of this Act a member of the legislative council of Nova Scotia or New Brunswick, accepts a place in the Senate shall thereby vacate his seat in such Legislative Council.

128. Oath of allegiance, &c.—Every member of the Senate or House of Commons of Canada shall, before taking his seat therein, take and subscribe before the Governor-General, or some person authorized by him, and every member of a Legislative Council or Legislative Assembly of any Province shall, before taking his seat therein, take and subscribe before the Lieutenant-Governor of the Province or some person authorized by him, the oath of allegiance contained in the fifth schedule to this Act; and every member of the Senate of Canada and every member of the Legislative Council of Quebec shall also, before taking his seat therein, take and subscribe before the Governor-General, or some person authorized by him the Declaration of Qualification contained in the same Schedule.

129. Continuance of existing laws, courts officers, &c.—Except as otherwise provided by this Act, all laws in force in Canada, Nova Scotia, or New Brunswick at the Union, and all Courts of civil and criminal jurisdiction, and all legal commissions, powers, and authorities, and all officers, judicial, administrative, and ministerial, existing therein at the Union, shall continue, in Ontario, Quebec, Nova Scotia, and New Brunswick respectively, as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland), to be repealed, abolished, or altered by the Parliament of Canada, or by the Legislature of the respective Province, according to the authority of the Parliament or of that Legislature under this Act.

130. Transfer of officers to Canada.—Until the Parliament of Canada otherwise provides, all officers of the several Provinces having duties to discharge in relation to matters other than those coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces, shall be officers of Canada, and shall continue to discharge the duties of their respective offices, under the same liabilities, responsibilities and penalties, as if the Union had not been made.

131. Appointment of new officers.—Until the Parliament of Canada otherwise provides, the Governor-General in Council may from time to time appoint such officers as the Governor-General in Council deems necessary or proper for the effectual execution of this Act.

132. Treaty obligations.—The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada or of any Province thereof, as part of the British Empire, towards foreign countries, arising under treaties between the Empire and such foreign countries.

133. Use of English and French Languages.—Either the English or the French language may be used by any person in the debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of

Quebec; and both those languages shall be used in the respective Records and Journals of those Houses; and either of those languages may be used by any person or in any pleading or process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those languages.

Ontario and Quebec.

134. Appointment of executive officers for Ontario and Quebec.—Until the Legislature of Ontario or of Quebec otherwise provides, the Lieutenant-Governors of Ontario and Quebec may each appoint, under the great seal of the Province, the following officers, to hold office during pleasure, that is to say,—the Attorney-General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, and, in the case of Quebec, the Solicitor-General; and may, by order of the Lieutenant-Governor in Council, from time to time prescribe the duties of those officers and of the several Departments over which they shall preside or to which they shall belong, and of the officers and clerks thereof; and may also appoint other and additional officers to hold office during pleasure, and may from time to time prescribe the duties of those officers, and of the several Departments over which they shall preside or to which they shall belong, and of the officers and clerks thereof.

135. Powers, duties, &c., of executive officers.—Until the Legislature of Ontario or Quebec otherwise provides, all rights, powers, duties, functions, responsibilities, or authorities at the passing of this Act vested in or imposed on the Attorney-General, Solicitor-General, Secretary and Registrar of the Province of Canada, Minister of Finance, Commissioner of Crown Lands, Commissioner of Public Works, and Minister of Agriculture and Receiver-General, by any law, statute, or ordinance of Upper Canada, Lower Canada, or Canada, and not repugnant to this Act, shall be vested in or imposed on any officer to be appointed

by the Lieutenant-Governor for the discharge of the same or any of them ; and the Commissioner of Agriculture and Public Works shall perform the duties and functions of the office of Minister of Agriculture at the passing of this Act imposed by the law of the Province of Canada, as well as those of the Commissioner of Public Works.

136. Great Seals.—Until altered by the Lieutenant-Governor in Council, the great seals of Ontario and Quebec respectively shall be the same, or of the same design, as those used in the Provinces of Upper Canada and Lower Canada respectively before their Union as the Province of Canada.

137. Construction of temporary Acts.—The words “and from thence to the end of the then next ensuing session of the Legislature,” or words to the same effect, used in any temporary Act of the Province of Canada not expired before the Union, shall be construed to extend and apply to the next session of the Parliament of Canada, if the subject matter of the Act is within the powers of the same, as defined by this Act, or to the next sessions of the Legislatures of Ontario and Quebec respectively, if the subject matter of the Act is within the powers of the same as defined by this Act.

138. As to errors in names.—From and after the Union the use of the words “Upper Canada” instead of “Ontario,” or “Lower Canada” instead of “Quebec,” in any deed, writ, process, pleading, document, matter, or thing, shall not invalidate the same.

139. As to issue of Proclamations before Union, to commence after Union.—Any proclamation under the great seal of the Province of Canada issued before the Union to take effect at the time which is subsequent to the Union, whether relating to that Province, or to Upper Canada, or to Lower Canada, and the several matters and things therein proclaimed shall be and continue of like force and effect as if the Union had not been made.

140. As to issue of Proclamations after Union.—Any Proclamation which is authorized by any Act of the Legislature of the Province of Canada to be

issued under the great seal of the Province of Canada, whether relating to that Province, or to Upper Canada, or to Lower Canada, and which is not issued before the Union, may be issued by the Lieutenant-Governor of Ontario or of Quebec, as its subject matter requires, under the great seal thereof; and from and after the issue of such proclamation, the same and the several matters and things therein proclaimed, shall be and continue of the like force and effect in Ontario or Quebec as if the Union had not been made.

141. Penitentiary.—The penitentiary of the Province of Canada shall, until the Parliament of Canada otherwise provides, be and continue the penitentiary of Ontario and of Quebec.

142. Arbitration respecting debts, &c.—The division and adjustment of the debts, credits, liabilities, properties, and assets of Upper Canada and Lower Canada shall be referred to the arbitrament of three arbitrators, one chosen by the Government of Ontario, one by the Government of Quebec, and one by the Government of Canada; and the selection of the arbitrators shall not be made until the Parliament of Canada and the Legislatures of Ontario and Quebec have met; and the arbitrator chosen by the Government of Canada shall not be a resident either in Ontario or in Quebec.

143. Division of records.—The Governor-General in Council may from time to time order that such and so many of the records, books, and documents of the Province of Canada as he thinks fit shall be appropriated and delivered either to Ontario or to Quebec, and the same shall thenceforth be the property of that Province; and any copy thereof or extract therefrom, duly certified by the officer having charge of the original thereof, shall be admitted as evidence.

144. Constitution of townships in Quebec.—The Lieutenant-Governor of Quebec may from time to time, by proclamation under the great seal of the Province, to take effect from a day to be appointed therein, constitute Townships in those parts of the Province of Quebec in which Townships are not then already constituted, and fix the metes and bounds thereof.

X.—INTERCOLONIAL RAILWAY.

145. Duty of Government and Parliament of Canada to make Railway herein described.—Inasmuch as the Provinces of Canada, Nova Scotia and New Brunswick have joined in a declaration that the construction of the Intercolonial Railway is essential to the consolidation of the Union of British North America, and to the assent thereto of Nova Scotia and New Brunswick, and have consequently agreed that provision should be made for its immediate construction by the Government of Canada: Therefore, in order to give effect to that agreement, it shall be the duty of the Government and Parliament of Canada to provide for the commencement, within six months after the Union, of a railway connecting the River St. Lawrence with the City of Halifax in Nova Scotia, and for the construction thereof without intermission, and the completion thereof with all practicable speed.

XI.—ADMISSION OF OTHER COLONIES.

146. Power to admit Newfoundland, &c., into the Union.—It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on addresses from the houses of the Parliament of Canada, and from the houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island and British Columbia, to admit those colonies or provinces, or any of them, into the Union, and on address from the Houses of the Parliament of Canada to admit Rupert's Land and the North-western territory, or either of them into the Union, on such terms and conditions in each case as are in the addresses expressed and as the Queen thinks fit to approve, subject to the provisions of this Act; and the provisions of any order in council in that behalf shall have effect as if they had been enacted by the Parliament of the united kingdom of Great Britain and Ireland.

147. As to Representation of Newfoundland and Prince Edward Island in Senate.—In case of the admission of Newfoundland and Prince Edward Island,

or either of them, each shall be entitled to a representation in the Senate of Canada of four members, and (notwithstanding anything in this Act) in case of the admission of Newfoundland the normal number of Senators shall be seventy-six and their maximum number shall be eighty-two ; but Prince Edward Island when admitted shall be deemed to be comprised in the third of the three divisions into which Canada is, in relation to the Constitution of the Senate, divided by this Act, and accordingly, after the admission of Prince Edward Island, whether Newfoundland is admitted or not, the representation of Nova Scotia and New Brunswick in the Senate shall, as vacancies occur, be reduced from twelve to ten members respectively, and the representation of each of those Provinces shall not be increased at any time beyond ten, except under the provisions of this Act for the appointment of three or six additional Senators under the direction of the Queen.

SCHEDULES.

THE FIRST SCHEDULE.

ELECTORAL DISTRICTS OF ONTARIO.

A.

EXISTING ELECTORAL DIVISIONS.

COUNTIES.

- | | |
|---------------|-------------------|
| 1. Prescott. | 6. Carleton. |
| 2. Glengarry. | 7. Prince Edward. |
| 3. Stormont. | 8. Halton. |
| 4. Dundas. | 9. Essex. |
| 5. Russell. | |

RIDINGS OF COUNTIES.

10. North Riding of Lanark.
11. South Riding of Lanark.
12. North Riding of Leeds and North Riding of Grenville.
13. South Riding of Leeds.
14. South Riding of Grenville.
15. East Riding of Northumberland.
16. West Riding of Northumberland (excepting therefrom the Township of South Monaghan).
17. East Riding of Durham.
18. West Riding of Durham.
19. North Riding of Ontario.
20. South Riding of Ontario.
21. East Riding of York.
22. West Riding of York.

23. North Riding of York.
24. North Riding of Wentworth.
25. South Riding of Wentworth.
26. East Riding of Elgin.
27. West Riding of Elgin.
28. North Riding of Waterloo.
29. South Riding of Waterloo.
30. North Riding of Brant.
31. South Riding of Brant.
32. North Riding of Oxford.
33. South Riding of Oxford.
34. East Riding of Middlesex.

CITIES, PARTS OF CITIES, AND TOWNS.

35. West Toronto.
36. East Toronto.
37. Hamilton.
38. Ottawa.
39. Kingston.
40. London.
41. Town of Brockville, with the Township of Elizabethtown thereto attached.
42. Town of Niagara, with the Township of Niagara thereto attached.
43. Town of Cornwall, with the township of Cornwall thereto attached.

B.

NEW ELECTORAL DIVISIONS.

44. The Provisional Judicial District of Algoma.
The County of BRUCE, divided into two Ridings, to be called respectively the North and South Ridings :
45. The North Riding of Bruce to consist of the Townships of Bury, Lindsay, Eastnor, Albermarle, Amabel, Arran, Bruce, Elderslie, and Saugeen. and the Village of Southampton.
46. The South Riding of Bruce to consist of the Townships of Kincardine (including the village of Kin-

cardine), Greenock, Brant, Huron, Kinloss, Culross, and Carrick.

The County of HURON, divided into two Ridings, to be called respectively the North and South Ridings:

47. The North Riding to consist of the Townships of Ashfield, Wawanosh, Turnberry, Howick, Morris, Grey, Colborne, Hullett (including the Village of Clinton), and McKillop.
48. The South Riding to consist of the Town of Goderich and the Townships of Goderich, Tuckersmith, Stanley, Hay, Usborne, and Stephen.

The County of MIDDLESEX, divided into three Ridings, to be called respectively the North, West, and East Ridings:

49. The North Riding to consist of the Townships of McGillivray and Biddulph (taken from the County of Huron), and Williams East, Williams West, Adelaide, and Lobo.
50. The West Riding to consist of the Townships of Delaware, Carradoc, Metcalfe, Mosa, and Ekfrid, and the Village of Strathroy.

[The East Riding to consist of the Townships now embraced therein, and be bounded as it is at present].

51. The County of LAMBTON to consist of the Townships of Bosanquet, Warwick, Plympton, Sarnia, Moore, Enniskillen, and Brooke, and the Town of Sarnia.
52. The County of KENT to consist of the Townships of Chatham, Dover, East Tilbury, Romney, Raleigh, and Harwich, and the Town of Chatham.
53. The County of BOTHWELL to consist of the Townships of Sombra, Dawn, and Euphemia (taken from the County of Lambton), and the Townships of Zone, Camden, with the Gore thereof, Orford, and Howard (taken from the County of Kent).

The County of GREY, divided into two Ridings, to be called respectively the South and North Ridings:

54. The South Riding to consist of the Townships of Bentick, Glenelg, Artemesia, Osprey, Normanby, Egremont, Proton, and Melancthon.

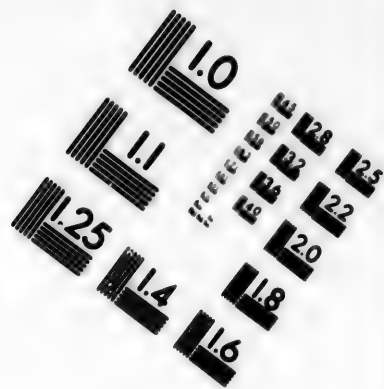
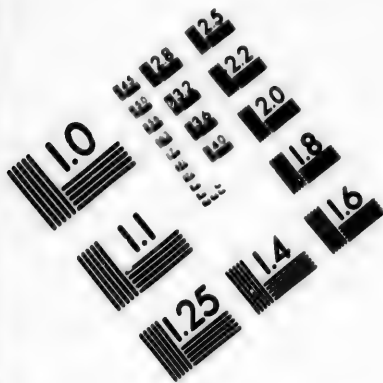
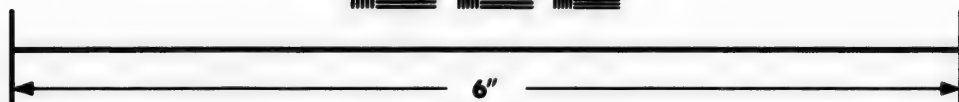
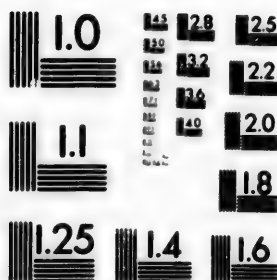


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55. The North Riding to consist of the Townships of Collingwood, Euphrasia, Holland, Saint Vincent, Sydenham, Sullivan, Derby and Keppel, Sarawak and Brooke, and the Town of Owen Sound.

The County of PERTH, divided into two Ridings, to be called respectively the South and North Ridings :

56. The North Riding to consist of the Townships of Wallace, Elma, Logan, Ellice, Mornington, and North Easthope, and the Town of Stratford.
57. The South Riding to consist of the Townships of Blanchard, Downie, South Easthope, Fullarton, Hibbert, and the Villages of Mitchell and St. Marys.

The County of WELLINGTON, divided into three Ridings, to be called respectively North, South, and Centre Ridings :

58. The North Riding to consist of the Townships of Amaranth, Arthur, Luther, Minto, Maryborough, Peel, and the Village of Mount Forest.
59. The Centre Riding to consist of the Townships of Garrafraxa, Erin, Eramosa, Nichol, and Pilkington, and the Villages of Fergus and Elora.
60. The South Riding to consist of the Town of Guelph, and the Townships of Guelph and Puslinch.

The County of NORFOLK, divided into two Ridings, to be called respectively the South and North Ridings :

61. The South Riding to consist of the Townships of Charlotteville, Houghton, Walsingham, and Woodhouse, and with the Gore thereof.
62. The North Riding to consist of the Townships of Middleton, Townsend, and Windham, and the Town of Simcoe.
63. The County of HALDIMAND to consist of the Townships of Oneida, Seneca, Cayuga North, Cayuga South, Rainham, Walpole, and Dunn.
64. The County of MONCK to consist of the Townships of Canborough and Moulton, and Sherbrooke, and the Village of Dunville (taken from the County of

Haldimand), the Townships of Caistor, and Gainsborough (taken from the County of Lincoln), and the Townships of Pelham and Wainfleet (taken from the County of Welland).

65. The County of LINCOLN to consist of the Townships of Clinton, Grantham, Grimsby and Louth, and the Town of St. Catharines.
66. The County of WELLAND to consist of the Townships of Bertie, Crowland, Humberstone, Stamford, Thorold, and Willoughby, and the Villages of Chippewa, Clifton, Fort Erie, Thorold, and Welland.
67. The County of PEEL to consist of the Townships of Chinguacousy, Toronto, and the Gore of Toronto, and the Villages of Brampton and Streetsville.
68. The County of CARDWELL to consist of the Townships of Albion and Caledon (taken from the County of Peel), and the Townships of Adjala and Mono (taken from the County of Simcoe).

The County of SIMCOE, divided into two Ridings, to be called respectively the South and the North Ridings:

69. The South Riding to consist of the Townships of West Gwillimbury, Tecumseth, Innisfil, Essa, Toronto, Mulmur, and the Village of Bradford.
70. The North Riding to consist of the Townships of Notawasaga, Sunnidale, Vespra, Flos, Oro, Medonte, Orillia and Matchedash, Tiny and Tay, Balaklava and Robinson, and the Towns of Barrie and Collingwood.

The County of VICTORIA, divided into two Ridings, to be called respectively the South and North Ridings:

71. The South Riding to consist of the Townships of Ops, Mariposa, Emily, Verulam, and the Town of Lindsay.
72. The North Riding to consist of the Townships of Anson, Bexley, Carden, Dalton, Digby, Eldon, Fenelon, Hindon, Laxton, Lutterworth, Macaulay and Draper, Sommerville and Morrison, Muskoka, Monck and Watt (taken from the County of Simcoe), and any other surveyed Townships lying to the North of the said North Riding.

The County of PETERBOROUGH, divided into two Ridings, to be called respectively the West and East Ridings :

73. The West Riding to consist of the Townships of South Monaghan (taken from the County of Northumberland), North Monaghan, Smith, and Ennismore, and the Town of Peterborough.
74. The East Riding to consist of the Townships of Asphodel, Belmont and Methuen, Douro, Dummer, Galway, Harvey, Minden, Stanhope, and Dysart, Otonabee and Snowden, and the Village of Ashburnham, and any other surveyed Townships lying to the North of the said East Riding.

The County of HASTINGS, divided into three Ridings, to be called respectively the West, East, and North Ridings :

75. The West Riding to consist of the Town of Belleville, the Township of Sydney, and the Village of Trenton.
76. The East Riding to consist of the Townships of Thurlow, Tyendinaga, and Hungerford.
77. The North Riding to consist of the Townships of Rawdon, Huntingdon, Madoc, Elzevir, Tudor, Marmora, and Lake, and the Village of Stirling, and any other surveyed Townships lying to the North of the said North Riding.
78. The County of LENNOX to consist of the Townships of Richmond, Adolphustown, North Fredericksburg, South Fredericksburg, Earnest-town and Amherst Island, and the Village of Napanee.
79. The County of ADDINGTON to consist of the Townships of Camden, Portland, Sheffield, Hinchinbrooke, Kaladar, Kennebec, Olden, Oso, Anglesea, Barrie, Clarendon, Palmerston, Effingham, Abinger, Miller, Canonto, Denbigh, Loughborough, and Bedford.
80. The County of FRONTENAC to consist of the Townships of Kingston, Wolfe Island, Pittsburgh, and Howe Island, and Storrington.

The County of RENFREW, divided into two Ridings, to be called respectively the South and North Ridings :

81. The South Riding to consist of the Townships of McNab, Bagot, Blithfield, Brougham, Horton, Admaston, Grattan, Matawatchan, Griffith, Lyn-doch, Raglan, Radcliffe, Brudenell, Sebastopol, and the Villages of Arnprior and Renfrew.
82. The North Riding to consist of the Townships of Ross, Bromley, Westmeath, Stafford, Pembroke, Wilberforce, Alice, Petawawa, Buchanan, South Algona, North Algona, Fraser, McKay, Wylie, Rolph, Head, Maria, Clara, Haggerty, Sherwood, Burns, and Richards, and any other surveyed Townships lying North-westerly of the said North Riding.

Every Town and incorporated Village existing at the Union, not specially mentioned in this Schedule, is to be taken as part of the County or Riding within which it is locally situate.

THE SECOND SCHEDULE.

ELECTORAL DISTRICTS OF QUEBEC SPECIALLY FIXED.

COUNTIES OF—

Pontiac.
Ottawa.
Argenteuil.
Huntingdon.
Missisquoi.
Brome.

Shefford.
Stanstead.
Compton.
Wolfe and Richmond.
Megantic.

Town of Sherbrooke.

THE THIRD SCHEDULE.

PROVINCIAL PUBLIC WORKS AND PROPERTY TO BE THE PROPERTY OF CANADA.

1. Canals, with Lands and Water Power connected therewith.
 2. Public Harbours.
 3. Lighthouses and Piers, and Sable Island.
 4. Steamboats, Dredges, and Public Vessels.
 5. Rivers and Lake Improvements.
 6. Railways and Railway Stocks, Mortgages, and other Debts due by Railway Companies.
 7. Military Roads.
 8. Custom Houses, Post Offices, and all other Public Buildings, except such as the Government of Canada appropriate for the use of the Provincial Legislatures and Governments.
 9. Property transferred by the Imperial Government, and known as Ordnance Property.
 10. Armouries, Drill Sheds, Military Clothing, and Munitions of War, and Lands set apart for general Public Purposes.
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THE FOURTH SCHEDULE.

ASSETS TO BE THE PROPERTY OF ONTARIO AND QUEBEC CONJOINTLY.

Upper Canada Building Fund.
Lunatic Asylums.
Normal School.
Court Houses in
Aylmer,
Montreal,
Kamouraska. } Lower Canada.

Law Society, Upper Canada.
Montreal Turnpike Trust.
University Permanent Fund.
Royal Institution.
Consolidated Municipal Loan Fund, Upper Canada.
Consolidated Municipal Loan Fund, Lower Canada.
Agricultural Society, Upper Canada.
Lower Canada Legislative Grant.
Quebec Fire Loan.
Temiscouata Advance Account.
Quebec Turnpike Trust.
Education, East.
Building and Jury Fund, Lower Canada.
Municipalities Fund.
Lower Canada Superior Education Income Fund.

THE FIFTH SCHEDULE.

OATH OF ALLEGIANCE.

I, *A. B.*, do swear, That I will be faithful and bear true Allegiance to Her Majesty Queen Victoria.

[NOTE.—The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time, with proper Terms of Reference thereto].

DECLARATION OF QUALIFICATION.

I, *A. B.*, do declare and testify, That I am by law duly qualified to be appointed a Member of the Senate of Canada [*or as the case may be*], and that I am legally or equitably seized as of freehold for my own use and benefit of lands or tenements held in free and common socage [*or seized or possessed for my own use and benefit of lands or tenements held in franc-allevu or in roture (as the case may be),*] in the Pro-

vince of Nova Scotia [*or as the case may be*] of the value of four thousand dollars over and above all rents, dues, debts, mortgages, charges, and incumbrances, due or payable out of or charged on or affecting the same, and that I have not collusively or colourably obtained a title to or become possessed of the said lands and tenements, or any part thereof, for the purpose of enabling me to become a Member of the Senate of Canada [*or as the case may be*], and that my real and personal property are together worth four thousand dollars over and above my debts and liabilities.

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BRITISH NORTH AMERICA ACT,
1871.

34—35 VICTORIA.

CHAP. XXVIII.

AN ACT

RESPECTING THE ESTABLISHMENT OF PROVINCES IN THE DOMINION OF CANADA.

[29th June, 1871.]

SECTION 1. Short title.

2. Parliament of Canada may establish new Provinces, and provide for the constitutions, &c., thereof.
3. Alteration of limits of Provinces.
4. Parliament of Canada may legislate for any territory not included in a Province.
5. Confirmation of Acts of Parliament of Canada, 32 & 33 Vic. (Canadian) Cap. 3, 33 Vic. (Canadian) Cap. 3.
6. Limitation of powers of Parliament of Canada to legislate for an Established Province.

WHEREAS doubts have been entertained respecting the powers of the Parliament of Canada to establish Provinces in Territories admitted, or which may hereafter be admitted, into the Dominion of Canada, and to provide for the representation of such Provinces in the said Parliament, and it is expedient to remove such doubts, and to vest such powers in the said Parliament :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords, Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. Short title.—This Act may be cited for all purposes as “ The British North America Act, 1871.”

2. Parliament of Canada may establish new Provinces, and provide for the Constitution &c., thereof.—The Parliament of Canada may from time to time establish new Provinces in any Territories forming for the time being part of the Dominion of Canada, but not included in any Province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such Province and for the passing of laws for the peace, order and good government of such Province, and for its representation in the said Parliament.

3. Alteration of limits of Provinces.—The Parliament of Canada may from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province under such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of Territory in relation to any Province affected thereby.

4. Parliament of Canada may legislate for any territory not included in a Province.—The Parliament of Canada may from time to time make provision for the administration, peace, order, and good government of any Territory not for the time being included in any Province

5. Confirmation of Acts of Parliament of Canada.—The following Acts passed by the said Parliament of Canada and intituled respectively : "An Act for the Temporary Government of Rupert's Land and the North-Western Territory when united with Canada," and "An Act to Amend and continue the Act Thirty-two and Thirty-three Victoria, chapter three," and to establish and provide for the "Government of the Province of Manitoba," shall be and be deemed to have been valid and effectual for all purposes whatsoever from the date at which they respectively received the assent in the Queen's name of the Governor General of the said Dominion of Canada.

6. Limitation of powers of Parliament of Canada to legislate for an established Province.
— Except as provided by the third section of this Act, it

shall not be competent for the Parliament of Canada to alter the provisions of the last mentioned Act of the said Parliament, in so far as it relates to the Province of Manitoba, or of any other Act hereafter establishing new Provinces in the said Dominion, subject always to the right of the Legislature of the Province of Manitoba to alter from time to time the provisions of any law respecting the qualification of electors and members of the Legislative Assembly, and to make laws respecting elections in the said Province.

**PARLIAMENT OF CANADA ACT,
1875.**

38—39 VICTORIA.

CHAP. XXXVIII.

AN ACT

TO REMOVE CERTAIN DOUBTS WITH RESPECT TO THE
POWERS OF THE PARLIAMENT OF CANADA UNDER
SECTION EIGHTEEN OF THE BRITISH NORTH
AMERICA ACT, 1867.

[19th July, 1875.]

Preamble.

- SECTION 1.** Substitution of new sec. for sec. 18 of 30 & 31 Vic. ch. 3.
2. Confirmation of act of Parliament of Canada, 31 & 32 Vic.
ch. 24.
3. Short title.

Preamble.—WHEREAS by Section Eighteen of the
British North America Act, 30 & 31 Vic. ch. 3, 1867, it
is provided as follows :

“The privileges, immunities and powers to be held, enjoyed and exercised by the Senate and by the House of Commons, and by the Members respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act, held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the members thereof.”

AND WHEREAS doubts have arisen with regard to the power of defining by an Act of the Parliament of Canada, in pursuance of the said section, the said privileges, powers, or immunities; and it is expedient to remove such doubts.

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords, Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. Substitution of new sec. for sec. 18 of 30 & 31 Vic. ch. 3.—Section Eighteen of the British North America Act, 1867, is hereby repealed without prejudice to anything done under that section, and the following section shall be substituted for the section so repealed.

The privileges, immunities and powers to be held, enjoyed and exercised by the Senate and by the House of Commons, and by the Members thereof, respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities and powers, shall not confer any privileges, immunities or powers exceeding those at the passing of such Act, held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the Members thereof.

2. Confirmation of act of Parliament of Canada, 31 & 32 Vic. ch. 24.—The Act of the Parliament of Canada passed in the thirty-first year of the Reign of Her present Majesty, chapter twenty-four, intituled "An Act to provide for oaths to witnesses being administered in certain cases for the purposes of either House of Parliament" shall be deemed to be valid, and to have been valid as from the date at which the Royal assent was given thereto by the Governor-General of the Dominion of Canada.

3. Short title.—This Act may be cited as "The Parliament of Canada Act, 1875."

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SUPREME AND EXCHEQUER COURT ACT.

38 VICTORIA.

CHAP. II.

AN ACT

TO ESTABLISH A SUPREME COURT, AND A COURT OF
EXCHEQUER, FOR THE DOMINION OF CANADA.

[Assented to 8th April, 1875.]

Preamble.

- SECTION 1. Courts established ; names.
2. Courts of Record.
 3. Number of Judges and quorum.
 4. Qualification of Chief Justice and Judges respectively.
To be Judges of both Courts. Residence.
 5. Tenure of office. "Judge" includes Chief Justice.
 6. Salaries, and how payable
 7. Retiring allowances, and how payable.
 8. Oath of office.
 9. How administered.
 10. Judges to hold no other office of profit,
 11. Interpretation of words and expressions as to appeal
"Judgment."— "Appeal"— "The Court."—"Court
appealed from."—Appeal to be from Court of last resort.
 12. Quorum in appeal.
 13. Two sessions in appeal yearly.
 14. Power to adjourn.—Notice.—How Court may be convened
at any time.
 15. Jurisdiction over all Canada.
 16. When error is alleged.
 17. In what cases appeals shall lie.—Proviso as to Quebec.--
Limitations as to cases in which appeal shall lie.
 18. Appeal upon special case.

- Sec.** 19. Appeal on a point reserved.
20. In cases of motions for new trial.
21. Notice in cases under next three preceding sections.
22. No appeal in matter of discretion only.
23. Appeal on mandamus, habeas corpus, &c., municipal by law, &c.
24. Practice in such cases.
25. Limitation of time for appeal in election cases; and in other cases.
26. Allowance of appeal in special cases on terms, notwithstanding lapse of time.
27. Appeal by consent of parties.
28. Proceedings requisite to bring case into Supreme Court.
29. Appeals to be on a special case.
30. Duty of Clerk of Court appealed from.
31. Security in appeal \$500, except in habeas corpus cases.—
 Proviso.
32. Execution stayed. Sub-section—Exceptions and conditions; 1. If the judgment orders delivery of documents or personalty. 2—Or execution of conveyance. 3—If the Court appealed from is a Court of Appeal. 4—If the judgment directs sale, &c., of realty. 5—If the judgment directs payment of money as a debt, &c. 6—
 Proviso as to instrument for giving such security.
33. Fiat to Sheriff when security is perfected; If Court appealed from be one of appeal; Proviso as to poundage.
34. Interest.
35. Money levied, and not paid over before fiat to be repaid by Sheriff.
36. Perishable property.
37. Power to quash proceedings in certain cases.
38. Power to dismiss appeal, or give the judgment which ought to have been given; costs.
39. Discontinuing proceedings.
40. Consent to reversal.
41. Motion for dismissal if case be not proceeded with.
42. Case of death of one of several appellants.
43. Or of a sole appellant or of all the appellants.
44. Of one of several respondents.
45. Of sole respondent, or of all respondents.
46. Judgment, &c., is to be carried out by court below.
47. Judgment to be final, and without appeal; Saving Her Majesty's Prerogative.
48. When Supreme Court is organized; secs. 33, 34 & 35 of 37 Vic. c. 10 repealed. Proceedings thereafter on appeal from judgment on Election Petition; Cases to be heard and determined by Supreme Court, and report made to the speaker; Decision to be final.
49. In what criminal cases an appeal shall lie, and powers of the court in such cases; Proviso; Cases in which no appeal shall be allowed.
50. When appeal must be brought to hearing.
51. Judges to have concurrent jurisdiction in such cases.

- SEC. 52. Governor in Council may refer any matter for an opinion ;
 Proviso : as to minority.
53. Court to report on any private bill or petition referred by either house.
54. Powers to be exercised with consent of Local Legislatures.
55. Procedure in cases firstly and secondly mentioned in sec. 53 to be in Exchequer Court appeal.
56. In cases thirdly and fourthly mentioned, to be in Supreme Court, and decision sent to court appealed from.
57. To what cases secs. 55 & 56 shall apply.
58. Concurrent jurisdiction of the court. Exclusive jurisdiction.
59. When the Dominion is a party interested.
60. Oath of office.
61. Rules of practice.
62. Judges to sit singly, and at any time or place.
63. Issues of fact, how tried.
64. If under sec. 58, to be tried without a jury.
65. Jurors in cases under sec. 59.
66. Process and officers of the court.
67. Fees.
68. Appeal to Supreme Court, conditions.
69. Registrar to be appointed ; salary.
70. To be Registrar of both courts.
71. Reports.
72. Fees to be paid by stamps.
73. Reports to be under direction of Judges.
74. Affidavits.
75. Process of court.
76. Who may practice in court as Barristers.
77. And as Attorneys or Solicitors.
78. All such practitioners to be officers of the courts.
79. Judges to make rules of procedure as well in appellate as original jurisdiction ; and may alter or amend them ; To what matters such rules may extend ; Proviso.
80. Commencement of the several provisions of this act.
81. Short title.

Preamble.—HER MAJESTY, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

1. Courts established: Names.—There are hereby constituted, and established, a Court of Common Law and Equity, in and for the Dominion of Canada, which shall be called "The Supreme Court of Canada," and a Court of Exchequer, to be called "The Exchequer Court of Canada."

2. Courts of Record.—The said Courts hereinafter termed “The Supreme Court” and “The Exchequer Court” respectively, shall be Courts of Record.

JUDGES OF THE SAID COURTS.

3. Number of Judges and quorum.—The Supreme Court shall be composed of a Chief Justice and five Puisine Judges, any five of whom, in the absence of the other of them, may lawfully hold the said Court in term.

4. Qualification of Chief Justice and Judges, respectively.—To be Judges of both Courts—**Residence.**—Her Majesty may appoint, by letters patent, under the great seal of Canada, one person, who is, or has been, a Judge of one of the Superior Courts in any of the Provinces forming part of the Dominion of Canada, or who is a barrister or advocate of at least ten years' standing at the Bar of any one of the said Provinces, to be Chief Justice of the said Court, and five persons who are, or have been, respectively, Judges of one of the said Superior Courts, or who are barristers or advocates of at least ten years' standing at the Bar of one of the said Provinces, to be Puisne Judges of the said Court, two of whom at least shall be taken from among the Judges of the Superior Court or Court of Queen's Bench, or the barristers or advocates of the Province of Quebec; and vacancies in any of the said offices shall, from time to time, be filled in like manner. The Chief Justice and Judges of the Supreme Court shall be respectively the Chief Justice and Judges of the Exchequer Court: they shall reside at the City of Ottawa, or within five miles thereof.

5. Tenure of office. “Judge” includes Chief Justice.—The Judges to be appointed under this Act shall hold their offices during good behaviour, but the Governor-General may remove any such Judge or Judges upon the address of the Senate and House of Commons. The word “Judge” in this Act includes a Chief Justice, unless it is otherwise expressed, or the context and sense require a distinction to be made.

6. Salaries, and how payable.—There shall be paid and payable out of the Consolidated Revenue Fund or

Canada (after paying or reserving sufficient to pay all such sums as have been heretofore charged thereon, but in preference to all payments which shall be hereafter charged thereon) the yearly sums following, as and for the salaries of the said Judges, as Judges of both Courts, that is to say : to the Chief Justice the sum of eight thousand dollars, and to each of the Puisne Judges, the sum of seven thousand dollars, which said sums shall be paid, free and clear from all deductions whatsoever, by monthly instalments ; the first payment to be made *pro rata* on the first day of the month, which shall occur next after the appointment of the Judge entitled to receive the same ; and if any person, hereafter appointed to any such office, dies or resigns the same, the executor or administrator of the person so dying, or the person so resigning, shall be entitled to receive such proportionate part of the salary aforesaid, as shall have accrued during the time that such person shall have executed such office since the last payment ; and the successor of such person, so dying or resigning, shall be entitled to receive such portion of the salary as shall accrue from the date of his appointment.

7. Retiring allowances, and how payable.

—In case any Judge appointed in pursuance of this Act has continued in the office of Judge of the said Courts, for fifteen years or upwards, or in the said office, and that of Judge of one or more of the Superior Courts of Law or Equity or of the Courts of Vice-Admiralty in any of the Provinces of the Dominion, for periods amounting together to fifteen years or upwards, or becomes afflicted with some permanent infirmity, disabling him from the due execution of his office, then, in case such Judge resigns his office, Her Majesty may, by letters patent under the Great Seal of Canada, reciting such period of office or such permanent infirmity, grant unto such Judge an annuity equal to two-thirds of the salary annexed to the office he held at the time of his resignation, to commence immediately after his resignation, and to continue thenceforth during his natural life, and to be payable by monthly instalments, and *pro rata* for any period less than a year, during such continuance, out of any unappropriated moneys forming part of the Consolidated Revenue Fund of Canada.

8. Oath of Office.—Every Judge to be appointed in pursuance of this Act, shall, previously to his executing the duties of his office, take the following oath :

“ I, _____, do solemnly and sincerely promise and “swear that I will duly and faithfully, and to the best of “my skill and knowledge execute the powers and trusts “reposed in me as Chief Justice (*or* as one of the Judges) of “the Supreme Court and of the Exchequer Court of Canada : “so help me God.”

9. How administered.—The said oath shall be administered to the Chief Justice of the said Courts before the Governor-General, or person administering the Government of the Dominion, in Council, and to the Pusine Judges of the said Courts by the Chief Justice.

10. Judges to hold no other office of profit.—No Judge to be appointed to office under this Act shall hold any other office of emolument either under the Government of the Dominion of Canada, or under the Government of any Province of Canada.

APPELLATE JURISDICTION OF THE SUPREME COURT.

11. Interpretation of words and expressions as to appeal.—“Judgment.”—“Appeal.”—“The Court.”—“Court appealed from.”—Appeal to be from Court of last resort.—Unless it is otherwise provided, or the context manifestly requires another construction, the following words and expressions, when used in this Act, with reference to proceedings under it in appeal shall have the meaning hereby assigned to them respectively :—The word “Judgment,” when used with reference to the Court appealed from, includes any judgment, rule, order, decision, decree, decretal order or sentence thereof ; and when used with reference to the Supreme Court, it includes any judgment or order of that Court. The word “appeal” includes any proceeding to set aside or alter any judgment of the Court appealed from on a point of law, as well as an appeal founded on the facts, or on the facts and law of any case. The expression “the Court” means the Supreme Court ; and the expression “the Court

appealed from " means the Court from which the appeal has been brought directly to the Supreme Court, whether such Court be a Court of original jurisdiction, or a Court of Error and Appeal : and when an appeal to the Supreme Court is given from a judgment in any case, it shall always be understood to be given from the Court of last resort in the Province where the judgment was rendered in such case.

12. Quorum in appeal.—Five judges of the said Supreme Court shall constitute a quorum for the purpose of hearing and determining causes in Appeal.

13. Two sessions in appeal yearly.—The said Supreme Court, for the purpose of hearing and determining Appeals shall hold annually, at the City of Ottawa, two sessions, the one beginning on the third Monday in January, and the other beginning on the first Monday in June, in each year, and each of the said sessions shall be continued until the business before the Court shall have been disposed of.

14. Power to adjourn.—Notice.—How Court may be convened at any time.—The Supreme Court may adjourn any session from time to time, and meet again at the time appointed for the transaction of business ; notice of such adjournment and of the day fixed for the continuance of such session shall be given by the Registrar in the *Canada Gazette*. The Court may be convened at any time by the Chief Justice, or in case of his absence or illness by the Senior Puisne Judge, in such manner as may be prescribed by the rules of practice hereinafter mentioned.

15. Jurisdiction over all Canada.—The Supreme Court shall have, hold, and exercise an appellate civil and criminal jurisdiction within and throughout the Dominion of Canada.

16. When error is alleged.—Whenever error in law is alleged, the proceedings in the Supreme Court shall be in the form of an appeal.

17. In what cases appeals shall lie, &c.—Subject to the limitations and provisions hereinafter made, an appeal shall lie to the Supreme Court from all final judgments of the highest Court of final resort, whether such

Court be a Court of Appeal or of original jurisdiction, now or hereafter established in any Province of Canada, in cases in which the Court of original jurisdiction is a Superior Court; Provided that no appeal shall be allowed from any judgment rendered in the Province of Quebec in any case wherein the sum or value of the matter in dispute does not amount to two thousand dollars; and the right to appeal in civil cases given by this Act, shall be understood to be given in such cases only as are mentioned in this section, except Exchequer cases, and cases of mandamus, habeas corpus, or municipal by-laws, as hereinafter provided.

18. Appeal upon special case.—An appeal in any such case as aforesaid, shall lie upon a special case unless the parties agree to the contrary; and the Supreme Court shall draw any inferences of fact from the facts stated in the special case which the Court appealed from ought to have drawn.

19. Appeal on a point reserved.—An appeal shall lie from the judgment upon any motion to enter a verdict or non-suit upon a point reserved at the trial.

20. In cases of motion for new trial.—An appeal shall lie from the judgment upon any motion for a new trial upon the ground that the judge has not ruled according to law.

21 Notice in cases under next three preceding sections.—No appeal shall be allowed under the next three preceding sections, unless notice thereof be given in writing to the opposite party, or his attorney of record, within twenty days after the decision complained of, or within such further time as the Court appealed from, or a Judge thereof, may allow.

22. No appeal in matter of discretion only.—When the application for a new trial is upon a matter of discretion only, as on the ground that the verdict is against the weight of the evidence, or otherwise, no appeal to the Supreme Court shall be allowed.

23. Appeal on mandamus, habeas corpus, &c., municipal by-law, &c.,—An appeal shall lie to

the Supreme Court in any case of proceedings for or upon a Writ of Habeas Corpus, not arising out of a criminal charge, and in any case of proceedings for or upon a Writ of Mandamus, and in any case in which a by-law of a municipal corporation has been quashed by rule of Court, or the rule for quashing it has been refused after argument.

24. Practice in such cases.—Proceedings in appeals shall when not otherwise provided for by this Act, or by the general rules and orders to be made in pursuance hereof, be as nearly as possible in conformity with the present practice of the Judicial Committee of Her Majesty's Privy Council.

25. Limitation of time for appeal in election cases; and in other cases.—Every appeal from the judgment of a Court or Judge, whereby an election petition has been decided, shall be brought within eight days from the rendering thereof; and every other appeal shall be brought within thirty days from the signing, or entry, or pronouncing of the judgment appealed from.

26. Allowance of appeal in special cases on terms, notwithstanding lapse of time.—Provided always, that the Court proposed to be appealed from, or any Judge thereof, may allow an appeal under special circumstances, except in the case of an election petition, notwithstanding that the same may not be brought within the time hereinbefore prescribed in that respect; but in such case, the Court or Judge shall impose such terms as to security or otherwise as shall seem proper under the circumstances.

27. Appeal by consent of parties.—An appeal shall also lie directly to the Supreme Court from the judgment of the Court of original jurisdiction, by consent of parties.

28. Proceedings requisite to bring cases into Supreme Court.—No Writ shall be required or issued for bringing any appeal in any case to or into the Supreme Court, but it shall be sufficient that the party desiring so to appeal shall, within the time hereinbefore limited in the case, have given the security required, and obtained the allowance of the appeal.

29. Appeals to be on a special case.—The appeal shall be upon a case to be stated by the parties or in the event of difference, to be settled by the Court appealed from, or a Judge thereof, and the case shall set forth the judgment objected to and so much of the pleadings, evidence, affidavits, and documents, as may be necessary to raise the question for the decision of the Court.

30. Duty of Clerk of Court appealed from.—The Clerk or other proper officer of the Court appealed from, shall, upon payment to him of the proper fees, and the expenses of transmission, transmit forthwith after such allowance, the case to the Registrar of the Supreme Court, and further proceedings shall thereupon be had according to the practice of that Court.

31. Security in appeal \$500, except in habeas corpus cases—Proviso.—No appeal shall be allowed (except only the case of appeal in proceedings for or upon a Writ of Habeas Corpus) until the Appellant has given proper security to the extent of five hundred dollars to the satisfaction of the Court, from whose judgment he is about to appeal, or a judge thereof, that he will effectually prosecute his appeal and pay such costs and damages as may be awarded in case the judgment appealed from be affirmed; Provided that this section shall not apply to appeals in election cases, for which special provision is hereinafter made.

32. Execution stayed—Exceptions and Conditions.—Upon the perfecting of such security, execution shall be stayed in the original cause, except in the following cases:—

1. If the judgment appealed from directs an assignment or delivery of documents or personal property, the execution of the judgment shall not be stayed until the things directed to be assigned or delivered have been brought into Court, or placed in the custody of such officer or receiver as the Court appoints, nor until security has been given to the satisfaction of the Court whose judgment has been appealed from, or of a judge thereof, in such sum as the Court or Judge may direct, that the Appellant will obey the order or judgment of the Supreme Court.

2. If the judgment appealed from directs the execution of a conveyance or any other instrument, the execution of the judgment shall not be stayed until the instrument has been executed and deposited with the proper officer of the Court appealed from, to abide the order or judgment of the Supreme Court.
3. Provided, that if the Court appealed from be itself a Court of Appeal, and such assignment or conveyance, document, instrument, property or thing, as aforesaid, has been deposited in the custody of the proper officer of the Court, in which the cause originated, the consent of the party desiring to appeal to the Supreme Court, that it shall so remain to abide the judgment of the Supreme Court, shall be binding on him, and shall be deemed a compliance with the foregoing requirements of this section.
4. If the judgment appealed from directs the sale or delivery of possession of real property, chattels real or immovables, the execution of the judgment shall not be stayed until security has been entered into to the satisfaction of the Court appealed from, or a Judge thereof, and in such sum as the said last mentioned Court or Judge directs, that during the possession of the property by the appellant, he will not commit, or suffer to be committed, any waste on the property; and that if the judgment be affirmed, he will pay the value of the use and occupation of the property from the time the appeal is brought, until delivery of possession thereof; and also in case the judgment is for the sale of property, and the payment of a deficiency arising upon the sale, that the appellant will pay the deficiency.
5. If the judgment appealed from directs the payment of money either as a debt, or for damages or costs, execution thereof shall not be stayed until the appellant has given security to the satisfaction of the Court appealed from, or of a Judge thereof,

that if the judgment, or any part thereof be affirmed, the appellant will pay the amount thereby directed to be paid, or the part thereof as to which the judgment may be affirmed, if it be affirmed only as to part, and all damages awarded against the appellant on appeal.

6. Provided that in any case in which execution may be stayed on the giving of security under this section, such security may be given by the same instrument, whereby the security prescribed in the next preceding section is given.

33. Fiat to Sheriff when security is perfected, &c.—When the security has been perfected and allowed, any Judge of the Court appealed from may issue his fiat to the Sheriff to whom any execution on the judgment has issued to stay the execution, and the execution shall be thereby stayed whether a levy has been made under it or not ; and if the Court appealed from is itself a Court of Appeal, and execution has been already stayed in the case, such stay of execution shall continue without any new fiat, until the decision of the case by the Supreme Court. Provided always that upon any judgment appealed from, on which any execution shall be issued before the Judge's fiat to stay the execution shall have been obtained, no poundage shall be allowed against the appellant, unless a Judge of the Court appealed from shall see fit to order otherwise.

34. Interest.—When, on proceedings in appeal against any judgment, the Supreme Court affirms such judgment, interest shall be allowed by the Court for such time as execution has been delayed by the appeal.

35. Money levied and not paid over before fiat to be repaid by Sheriff.—If at the time of the receipt by the Sheriff of the fiat, or of a copy thereof, the money has been made or received by him, but not paid over to the party who issued the execution, the party appealing may demand back from the Sheriff the amount made or received under the execution, or so much thereof as is in his hands not paid over, and in default of payment by the Sheriff, upon such demand, the party appealing may recover the same from him in an action for money had and received,

or by means of an order or rule of the Court appealed from.

36. Perishable property.—If the judgment appealed from directs the delivery of perishable property, the Court appealed from, or a Judge thereof, may order the property to be sold, and the proceeds to be paid into Court, to abide the judgment of the Supreme Court.

37. Power to quash proceedings in certain cases.—The Supreme Court shall have power to quash proceedings in cases brought before it, in which appeal does not lie, or where such proceedings are taken against good faith.

38. Power to dismiss appeal or give the judgment which ought to have been given, &c.—The Supreme Court shall have power to dismiss an appeal, or to give the judgment, and to award the process or other proceedings which the Court whose decision is appealed against ought to have given or awarded; and the Supreme Court may in its discretion, order the payment of the costs of the Court appealed from, and also of the appeal or any part thereof; and as well when the judgment appealed from is reversed as where it is affirmed.

39. Discontinuing Proceedings.—An appellant may discontinue his proceedings by giving to the respondent a notice entitled in the Supreme Court and cause and signed by the appellant, his Attorney or Solicitor, stating that he discontinues such proceedings, and thereupon the respondent shall be at once entitled to the costs of and occasioned by the proceedings in appeal, and may in the Court of original jurisdiction either sign judgment for such costs, or obtain an order from such Court, or a Judge thereof, for their payment, and may take all further proceedings in that Court as if no appeal had been brought.

40. Consent to reversal.—A respondent may consent to the reversal of the judgment appealed against, by giving to the appellant a notice entitled in the Supreme Court and cause and signed by the respondent, his Attorney or Solicitor, stating that he consents to the reversal of the judgment, and thereupon the Court, or any Judge thereof, shall pronounce judgment of reversal as of course.

41. Motion for dismissal if case be not proceeded with.—In case an appellant unduly delays to prosecute his appeal or fails to bring the appeal on to be heard at the first term of the Supreme Court, after the appeal is ripe for hearing, the respondent may, on notice to the appellant, move the Supreme Court, or a Judge thereof in Chambers, for the dismissal of the appeal, and such order shall thereupon be made as the said Court or Judge shall deem just.

42. Case of death of one of several appellants.—In the case of the death of one of several appellants pending the appeal to the Supreme Court, a suggestion may be filed of his death, and the proceedings may thereupon be continued at the suit of, and against the surviving appellant as if he were the sole appellant, but such suggestion, if untrue, may be set aside on motion made to the Supreme Court, or a Judge thereof in Chambers.

43. Case of death of sole appellant or of all the appellants.—In the case of the death of a sole appellant or of all the appellants, the legal representative of the sole appellant or of the last surviving appellant, may, by leave of the Court or a Judge, file a suggestion of the death, and that he is such legal representative, and the proceedings may thereupon be continued at the suit of, and against such legal representative as the appellant, and if no such suggestion be made, the respondent may proceed to an affirmance of the judgment, according to the practice of the Court, or take such other proceedings as he may be entitled to, and such suggestion, if untrue, may be set aside on motion by the Court or a Judge thereof.

44. Case of death of one of several respondents.—In the case of the death of one of several respondents, a suggestion may be filed of such death, and the proceedings may be continued against the surviving respondent, but such suggestion, if untrue, may be set aside on motion by the Court or a Judge thereof.

45. Case of death of sole respondent, or of all respondents.—In the case of the death of a sole respondent or of all the respondents, the appellant may proceed,

upon giving one month's notice of the appeal and of his intention to continue the same to the representative of the deceased party, or if no such notice can be given, then upon such notice to the parties interested as a Judge of the said Supreme Court may direct.

46. Judgment, &c., to be carried out by Court below.—The judgment of the Supreme Court in Appeal shall be certified by the Registrar of the said Court to the proper officer of the Court of original jurisdiction, who shall thereupon make all proper and necessary entries thereof, and all subsequent proceedings may be taken thereupon as if the judgment had been given or pronounced in the said last mentioned Court.

47. Judgment to be final, and without appeal, saving Her Majesty's prerogative.—The judgment of the Supreme Court shall in all cases be final and conclusive, and no appeal shall be brought from any judgment or order of the Supreme Court to any Court of Appeal established by the Parliament of Great Britain and Ireland, by which appeals or petitions to Her Majesty in Council may be ordered to be heard; saving any right which Her Majesty may be graciously pleased to exercise by virtue of Her Royal prerogative.

APPEAL IN CONTROVERTED ELECTION CASES.

48. When Supreme Court is organized, secs. 33, 34 and 35 of 37 Vic. ch. 10 repealed—Proceedings thereafter on appeal from judgment on Election Petition—Cases to be heard by Supreme Court, etc.—When the Supreme Court is organized, and in the exercise of its appellate jurisdiction, the thirty-third, thirty-fourth and thirty-fifth sections of the act passed in the thirty-seventh year of Her Majesty's reign, and intituled "*An Act to make better provision for the trial of Controverted Elections of Members of the House of Commons, and respecting matters connected therewith,*" shall be repealed, except as hereinafter provided with respect to proceedings then pending and thereafter any party to an election petition under the said Act, who may be dissatisfied with the decision of the Judge who has tried such petition, on any question of law or of fact, and desires to appeal against the same, may within

eight days from the day on which the Judge has given his decision, deposit with the Clerk, or other proper officer of the Court (of which the Judge is a member) for receiving moneys paid into such Court at the place where the petition was tried if in the Province of Quebec, and at the Chief Office of the Court in any other Province, the sum of one hundred dollars as security for costs, and a further sum of ten dollars as a fee for making up and transmitting the record ; and thereupon the Clerk or other proper officer of the Court shall make up and transmit the record in the case to the Registrar of the Supreme Court, who shall set down the matter of the said petition for hearing by the said Court at the nearest convenient time, and according to any rules made in that behalf under this Act, and the party so appealing shall thereupon within three days or such further time as the Judge who tried the petition may allow, give to the other parties to the said petition affected by the said appeal, or the respective Attorneys or Agents by whom such parties were represented at the trial of the petition, notice in writing that the matter of the petition has been so set down for hearing in appeal as aforesaid, in and by which notice the said party so appealing may, if he desires, limit the subject of the said appeal to any special and defined question or questions : and the appeal shall thereupon be heard and determined by the Supreme Court, which shall pronounce such judgment upon questions of law or of fact, or both, as in the opinion of the said Court ought to have been given by the Judge whose decision is appealed from, and the Supreme Court may make such order as to the money deposited as aforesaid, and as to the costs of the appeal as it may think just ; and in case it appears to the Court that any evidence duly tendered at the trial was improperly rejected, the Court may cause the witness to be examined before the Court or a Judge thereof, or upon commission ; and the Registrar shall certify to the Speaker of the House of Commons the judgment and decision of the Court upon the several questions as well of fact as of law, upon which the Judge appealed from might otherwise have determined and certified his decision in pursuance of the said Act, in the same manner as the said Judge should otherwise have done, and with the same effect, and the judgment and decision of the Supreme Court shall be final to all intents and purposes.

CRIMINAL APPEALS.

49. In what Criminal Cases an Appeal shall lie, and powers of the Court in such cases.—Any person convicted of treason, felony, or misdemeanor, before any Court of Oyer and Terminer or gaol delivery, or before the Court of Queen's Bench in the Province of Quebec on its Crown side, or before any other Superior Court of criminal jurisdiction, whose conviction has been affirmed by any Court of last resort, or in the Province of Quebec by the Court of Queen's Bench on its appeal side, or any person in custody within the Dominion of Canada, whose extradition is claimed in pursuance of any treaty and whose application for discharge on a writ of *habeas corpus ad subjiciendum* has been refused, may appeal to the Supreme Court against the affirmation of such conviction or the refusal of such application, and the said Court shall make such rule or order therein, either in affirmance of the conviction or for granting a new trial, or otherwise, or for granting or refusing such application, as the justice of the case requires, and shall make all other necessary rules and orders for carrying such rule or order into effect, anything in the eightieth section of the Act passed in the session held in the thirty-second and thirty-third years of Her Majesty's reign, chapter twenty-nine, to the contrary notwithstanding: Provided that no such appeal shall be allowed where the Court affirming the conviction is unanimous, nor unless notice of appeal in writing has been served on the Attorney-General for the proper Province, within fifteen days after such affirmance or refusal.

As to extradition cases, see note to sec. 51.

50. When appeal must be brought to hearing.—Unless the appeal is brought on for hearing by the appellant at the term of the Supreme Court, during which such affirmance or refusal takes place, or the term next thereafter (if the said Court be not then sitting in term) the appeal shall be held to have been abandoned, unless otherwise ordered by the Supreme Court.

JURISDICTION IN HABEAS CORPUS AD SUBJICIENDUM.

51. Judges to have concurrent jurisdiction in such cases.—Any Judge of the Supreme Court shall have concurrent jurisdiction with the Courts or Judges of the several Provinces, to issue the writ of *habeas corpus ad sub-*

jiciendum, for the purpose of an enquiry into the cause of commitment, in any criminal case under any Act of the Parliament of Canada, or in any case of demand for extradition, and if the Judge shall refuse the writ or remand the prisoner, an appeal shall lie to the Court.

By sec. 31 of the Supreme Court Amendment Act, so much of the Supreme and Exchequer Court Act as confers jurisdiction, whether original or appellate, on the Supreme Court, or any Judge thereof, in *habeas corpus* matters arising out of any claim for extradition made under any treaty, is repealed.

SPECIAL CASES REFERRED TO THE COURT.

52. Governor in Council may refer any matter for an opinion.—It shall be lawful for the Governor in Council to refer to the Supreme Court for hearing or consideration any matters whatsoever as he may think fit, and the Court shall thereupon hear and consider the same and certify their opinion thereon to the Governor in Council: Provided that any Judge or Judges of the said Court who may differ from the opinion of the majority may in like manner certify his or their opinion or opinions to the Governor in Council.

53. Court to report on any private bill or petition referred by either House.—The said Court, or any two of the Judges thereof, shall examine and report upon any private bill or petition for a private bill presented to the Senate or House of Commons and referred to the Court under any rules or orders made by the Senate or House of Commons.

SPECIAL JURISDICTION.

54. Powers to be exercised with consent of Local Legislatures.—When the Legislature of any Province forming part of Canada shall have passed an Act agreeing and providing that the Supreme Court, and the Exchequer Court, or the Supreme Court alone, as the case may be, shall have jurisdiction in any of the following cases, viz. :—(1st) Of controversies between the Dominion of Canada and such Province; (2nd) Of controversies between such Province and any other Province or Provinces, which may have passed a like Act; (3rd) Of suits, actions or proceed-

ings in which the parties thereto by their pleadings shall have raised the question of the validity of an Act of the Parliament of Canada, when in the opinion of a Judge of the Court in which the same are pending such question is material; (4th) Of suits, actions or proceedings in which the parties thereto by their pleadings shall have raised the question of the validity of an Act of the Legislature of such Province, when in the opinion of a Judge of the Court in which the same are pending such question is material; then this section and the three following sections of this Act shall be in force in the class or classes of cases in respect of which such Act so agreeing and providing may have been passed.

55. Procedure in cases firstly and secondly mentioned—The procedure in the cases firstly and secondly mentioned in the next preceding section shall be in the Exchequer Court, and an appeal shall lie in any such case to the Supreme Court.

56. In cases thirdly and fourthly mentioned, &c.—In the cases thirdly and fourthly mentioned in the next preceding section but one, the Judge who has decided that such question is material, shall order the case to be removed to the Supreme Court in order to the decision of such question, and it shall be removed accordingly; and after the decision of the Supreme Court, the said case shall be sent back, with a copy of the judgment on the question raised, to the Court or Judge whence it came, to be then and there dealt with as to justice may appertain.

Amended by inserting after the word "shall" in the third line words following, "at the request of the parties, and may without such request if he thinks fit." (See S. C. A. A. sec. 17.)

57. To what cases sections 55 and 56 shall apply.—The next two preceding sections apply only to cases of a civil nature, and shall take effect in the cases therein provided for respectively, whatever may be the value of the matter in dispute, and there shall be no further appeal to the Supreme Court on any point decided by it in any such case, nor on any other point unless the value of the matter in dispute exceeds five hundred dollars.

EXCHEQUER COURT.

58. Concurrent jurisdiction of the Court.—**Exclusive jurisdiction.**—The Exchequer Court shall have and possess concurrent original jurisdiction in the Dominion of Canada in all cases in which it shall be sought to enforce any law of the Dominion of Canada relating to the revenue, including actions, suits and proceedings by way of information, to enforce penalties and proceedings by way of information *in rem*, and as well in *qui tam* suits for penalties or forfeitures as where the suit is on behalf of the Crown alone, and the said Court shall have exclusive original jurisdiction in all cases in which demand shall be made or relief sought in respect of any matter which might in England be the subject of a suit or action in the Court of Exchequer on its Revenue side against the Crown, or any officer of the Crown.

This section is amended by adding after the words "Crown alone," in the ninth line the words following: "and in all cases in which demands shall be made or relief sought in respect of any matter which might in England be the subject of a suit or action in the Court of Exchequer on its plea side, against any officer of the Crown," and also by striking out the words "or any officer of the Crown" at the end of the said section. (See S. C. A. A. sec. 18.)

59. When the Dominion is a party interested.
—The Exchequer Court shall also have concurrent original jurisdiction with the Courts of the several Provinces in all other suits of a civil nature at common law or equity, in which the Crown in the interest of the Dominion of Canada is plaintiff or petitioner.

JUDGES.

60. Oath of office.—The Chief Justice and the Judges of the Supreme Court shall, previously to their executing the duties of their office, as Judges of the Exchequer Court, take the oath mentioned in section eight of this Act.

61. Rules of Practice.—The procedure in suits and actions within the jurisdiction of the Exchequer Court shall, unless it be otherwise provided for by general rules made in pursuance of this Act, be regulated by the practice and

procedure of Her Majesty's Court of Exchequer at Westminster on its Revenue side.

This section is amended by striking out the words "on its revenue side" and inserting in lieu thereof "in similar suits." (See S. C. A. A. sec. 19).

SITTINGS AND DISTRIBUTION OF BUSINESS.

62. Judges to sit singly, and at any time or place.—Subject to rules of Court, the Judges of the Exchequer Court, respectively, shall have power to sit and act at any time and at any place for the transaction of the business of the Exchequer Court, or any part thereof; and the hearing and trial of any case shall be by and before one Judge of the Court sitting alone, and such Judge shall decide such case, and his decision shall be the judgment of the Court therein, and such Judge shall have the same power and authority as the Court.

63. Issues of fact, how tried.—Issues of fact, in cases before the said Court, shall be tried according to the laws of the Province in which the cause originated, including the laws of evidence.

64. If under section 58, to be tried without a jury.—Issues of fact in cases arising under the fifty-eighth section shall be tried by the Judge without a jury.

65. Jurors in cases under section 59.—For the trial of issues of fact, in cases arising under the fifty-ninth section, a Judge of the said Court may order a writ of *venire facias* to be issued, directed to any of the Sheriffs or Coroners in the next section mentioned, commanding him to summon a panel of not less than twenty-four nor more than thirty-six jurors to attend at the time and place in said writ named, and the Sheriff or Coroner shall execute and return the said writ as directed thereby.

See S. C. A. A., secs. 21, 22 & 23 for further provisions as to jurors.

66. Process and officers of the Court.—The process of the said Court shall be tested in the name of the Chief Justice, or in case of a vacancy of the Senior Puisne Judge of the said Court, and shall be directed to the sheriff of any county or other judicial division into which any of

the said Provinces may be divided ; and the sheriffs of the said respective counties or divisions shall be deemed and taken to be *ex officio* officers of the said Exchequer Court, and shall perform the duties and functions of sheriffs in connection with the said Court ; and in any case where the sheriff may be disqualified, such process shall be directed to any of the coroners of the county or district.

67. Fees.—The said sheriffs and coroners shall receive and take to their own use such fees as the Judges of the said Exchequer Court shall by general order fix and determine.

See Exchequer Court Rule 246.

68. Appeal to Supreme Court.—Any party to a suit in the Exchequer Court who may be dissatisfied with the decision therein, and desires to appeal against the same, may, within thirty days from the day on which the Judge has given such decision, or within such further time as the Judge may allow, deposit with the Registrar of the said Court the sum of fifty dollars by way of security for costs, and thereupon the Registrar shall set the suit down for hearing before the Supreme Court on the first day of the next term ; and the party appealing shall thereupon, within three days of the deposit, give to the party or parties affected by the said appeal, or their respective attorneys, by whom such parties were represented before the Judge of the Exchequer Court, notice in writing that the case has been so set down to be heard in appeal as aforesaid, and by such notice the said party so appealing may, if he desires, limit the subject of the appeal to any special defined question or questions, and the said appeal shall thereupon be heard and determined by the said Supreme Court.

GENERAL PROVISIONS.

69. Registrar to be appointed—Salary.—A fit and proper person being a barrister of at least five years' standing, may be appointed by an instrument under the Great Seal of Canada, to hold office during pleasure as the Registrar of the said Supreme Court, and such Registrar shall reside and keep his office at the City of Ottawa, and shall be paid a salary of two thousand six hundred dollars

per annum; and the Governor may, from time to time, appoint such other clerks and servants of the said Court, and of the Exchequer Court, as may be found necessary, and who shall hold office during pleasure.

70. To be Registrar of both Courts.—The Registrar of the Supreme Court to be appointed under this Act shall also be the Registrar of the Exchequer Court of Canada.

71. Reports.—A *precis* writer shall be appointed by the Governor in Council to report the decisions of the Supreme Court, and of the Exchequer Court of Canada, and shall act as secretary to the Chief Justice and Judges appointed under this Act, and such *precis* writer shall be paid a salary, to be determined by the Governor in Council.

72. Fees to be paid by Stamps.—All fees payable to the Registrar under the provisions of this Act shall be paid by means of stamps, which shall be issued for that purpose by the Minister of Inland Revenue, who shall regulate the sale thereof; and the proceeds of the sale of such stamps shall be paid into the Consolidated Revenue Fund of Canada.

73. Reports to be under direction of Judges.—The reports of the decisions of the Supreme Court and of the Exchequer Court, shall, subject to the direction of the Judges of the said Courts, be published by the Registrar appointed under this Act.

74. Affidavits.—All persons authorized to administer affidavits in any of the Superior Courts of any Province may administer affidavits sworn in such Province to be used in the Supreme Court and in the Exchequer Court.

75. Process of Court.—The process of the Supreme Court shall run throughout the Dominion, and shall be tested in the name of the Chief Justice, or in the case of vacancy of the office, in the name of the Senior Puisne Judge of the Court, and shall be directed to like officers as the process of the Exchequer Court, and obeyed in like manner.

76. Who may practice in the Court as Barrist—All persons being Barristers or Advocates in any of the Provinces shall have the right to practice as Barristers, Advocates and Counsel in the Supreme Court and the Exchequer Court.

77. Who may practice as Attorneys or Solicitors.—All persons being Attorneys, Solicitors or Proctors of the Superior Courts, or of any Court of Vice-Admiralty in any of the Provinces, shall have the right to practice as Attorneys, Solicitors and Proctors in the said Supreme Court and Exchequer Court.

78. All such Practitioners to be officers of the Courts.—All persons who may practice as Barristers, Advocates, Counsel, Attorneys, Solicitors or Proctors in the Supreme Court or Exchequer Court shall be officers of such Court.

79. Judges to make rules of procedure as well in appellate as original jurisdiction.—The Judges of the Supreme Court, or any five of them, may, from time to time, make general rules and orders for regulating the procedure of and in the Supreme Court, and the bringing of cases before it from Courts appealed from or otherwise, and the procedure of the Exchequer Court, and for the effectual execution and working of this Act, and the attainment of the intention and objects thereof, and for fixing the fees and costs to be taxed and allowed to, and received and taken by, and the rights and duties of the officers of the said Courts, and may, from time to time, alter and amend any of the existing rules, or any rules made under the authority of this Act, and make other rules instead thereof; and such rules may extend to any matter of procedure or otherwise not provided for by this Act, but for which it may be found necessary to provide in order to insure the proper working of this Act and the better attainment of the objects thereof; and all such rules not being inconsistent with the express provisions of this Act shall have force and effect as if herein enacted: Provided that copies of all such rules shall be laid before both Houses of the Parliament of Canada at the next session thereof.

80. Commencement of the several provisions of this Act.—This Act shall come into force as respects the appointment of Judges, Registrar, Clerks and Servants of the said Courts, the organization thereof, and the making of general rules and orders under the next preceding section, on a day to be appointed by proclamation under order of the Governor in Council; and the other provisions thereof, and the judicial functions of the said Courts respectively shall take effect and be exercised only at and after such other time as shall be appointed by proclamation under order of the Governor in Council.

81. Short Title.—This Act may be cited as “*The Supreme and Exchequer Court Act.*”

PROCLAMATIONS.

PROCLAMATION

RESPECTING THE ORGANIZATION OF THE SUPREME
AND EXCHEQUER COURTS OF CANADA.

(See Supreme and Exchequer Court Act, sec. 80.)

W. O'G. HALY,
Lieutenant-General,
Administrator.

[L. S.]

CANADA.

VICTORIA, by the Grace of God, of the United Kingdom
of Great Britain and Ireland, Queen, Defender of the
Faith, &c., &c., &c.

To all to whom these Presents shall come, or whom the
same may in any wise concern,—GREETING :

A PROCLAMATION.

EDWARD BLAKE, }
Attorney-General. } WHEREAS it is in and by an
Canada. } Act passed by the Parliament
of Canada, in the Thirty-Eighth
year of Our Reign, intituled, "An Act to establish a Supreme
Court and a Court of Exchequer for the Dominion of
Canada," amongst other things in effect enacted, that the
said Act shall come into force as respects the appointment
of Judges, Registrar, Clerks and Servants of the said Courts,
the organization thereof and the making of general rules and
orders under the seventy-ninth section of the said Act, on a
day to be appointed by Proclamation under order of the
Governor in Council.

AND WHEREAS Our Governor in Council has been pleased by order to direct that the day hereinafter mentioned be appointed by Proclamation as the day on which the said Act shall come into force, to the extent in the section hereinbefore mentioned specified :—

NOW KNOW YE and We do by this Our Royal Proclamation and by and with the advice of Our Privy Council of Canada, proclaim, order and direct that the Act made & passed in the thirty-eighth year of Our Reign, intituled, "An Act to establish a Supreme Court and a Court of Exchequer, for the Dominion of Canada," shall come into force as respects the appointment of Judges, Registrar, Clerks and Servants of the said Courts, the organization thereof and the making of general rules and orders under the seventy-ninth section of the said Act, on the EIGHTEENTH day of SEPTEMBER, in the present year, one thousand eight hundred and seventy-five.

Of all which our loving subjects and all others to whom these presents may come, or whom the same may, in any wise, concern, are hereby required to take notice and govern themselves accordingly.

IN TESTIMONY WHEREOF, We have caused these Our Letters to be made Patent, and the Great Seal of Canada to be hereunto affixed. WITNESS, Our Trusty and Well Beloved Lieutenant-General SIR WILLIAM O'GRADY HALY, Knight Commander of our Most Honourable Order of the Bath, Administrator of the Government of Canada and Commander of Our Forces therein, &c., &c.

At Our Government House, in Our CITY of OTTAWA, this SEVENTEENTH day of SEPTEMBER, in the year of Our Lord one thousand eight hundred and seventy-five and in the Thirty-Ninth year of Our Reign.

By Command.

R. W. SCOTT,

Secretary of State.

PROCLAMATION

RESPECTING THE JUDICAL FUNCTIONS OF THE SUPREME
AND EXCHEQUER COURTS OF CANADA.

(See Supreme and Exchequer Court Act, sec. 80.)

DUFFERIN.

[L. S.]

CANADA.

VICTORIA, by the Grace of God, of the United Kingdom
of Great Britain and Ireland, Queen, Defender of the
Faith, &c., &c., &c.

To all to whom these presents shall come, or whom the
same may in any wise concern, GREETING :

A PROCLAMATION.

EDWARD BLAKE, Attorney-General, Canada.	} WHEREAS it is in and by an Act passed by the Parliament of Canada in the Thirty-Eighth year of Our Reign, intituled, "An Act to establish a Supreme Court and a Court of Exchequer for the Dominion of Canada," amongst other things in effect enacted, that the said Act shall come into force as respects the appointment of Judges and Officers of the said Court, the organization thereof, and the making of general rules and orders under the seventy-ninth section of the said Act, on a day to be appointed by proclamation under order of the Governor in Council; and that the other provisions thereof, and the judical functions of the said Courts respectively shall take effect and
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be exercised only at and after such other time as shall be appointed by proclamation under Order of the Governor in Council ;

AND WHEREAS under the provisions of the said Act by proclamation the said Act came into force on the eighteenth day of September, in the year of Our Lord one thousand eight hundred and seventy-five as respects the appointment of Judges and Offices of the said Courts, the organization thereof and the making of general rules and orders under the seventy-ninth section of the said Act ;

AND WHEREAS our Governor in Council has been pleased by Order to direct that the day hereinafter mentioned be appointed by Proclamation as the day and time at and after which the other provisions of the said Act, and the judicial functions of the Supreme Court of Canada and of the Exchequer Court of Canada respectively, shall take effect and be exercised.

NOW KNOW YE, and we do by this Our Royal Proclamation, and by and with the advice of Our Privy Council for Canada, Proclaim, Order and Direct that the Eleventh day of January, in the year of Our Lord one thousand eight hundred and seventy-six, has been and is hereby appointed as the day and time at and after which the judicial functions of the said Courts respectively, and the provisions of the said Act, other than those proclaimed as in force on the Eighteenth day of September now last past, as hereinbefore recited, shall take effect and be exercised.

Of all which our loving subjects and all others to whom these presents may come, or whom the same may, in any wise, concern, are hereby required to take notice and govern themselves accordingly.

IN TESTIMONY WHEREOF, We have caused these our Letters to be made Patent, and the Great Seal of Canada to be hereunto affixed. WITNESS, Our Right Trusty and Well Beloved Cousin and Councillor the Right Honourable Sir FREDERICK TEMPLE, Earl of Dufferin, Viscount and Baron Clandeboye of Clandeboye, in the County Down, in the Peerage of the United Kingdom, Baron Dufferin and Clandeboye,

of Ballyleidy and Killeleagh, in the County Down, in the Peerage of Ireland, and a Baronet, Knight of Our Most Illustrious Order of Saint Patrick, and Knight Commander of Our Most Honourable Order of the Bath, Governor-General of Canada, and Vice-Admiral of the same :

At Our Government House, in our CITY of OTTAWA, this TENTH day of JANUARY, in the year of Our Lord one thousand eight hundred and seventy-six, and and in the Thirty-ninth year of Our Reign.

By Command.

R. W. SCOTT,

Secretary of State.

SUPREME AND EXCHEQUER COURT
AMENDMENT ACT.

39 VICTORIA.

CHAP. XXVI.

AN ACT

TO MAKE FURTHER PROVISION IN REGARD TO THE
SUPREME COURT, AND THE EXCHEQUER
COURT OF CANADA.

[Assented to 12th April, 1876.]

Preamble.

- SECTION 1.** Proceedings for the examination on interrogatories or by commission, of persons who cannot for certain reasons conveniently appear in Court. Sub-section 2—Such persons hereinafter called “witnesses.”
2. Duty of persons taking such examination.—Punishment of witnesses wilfully giving false evidence.
 3. Court or Judge may order further examination.—Penalty on party refusing to aid in procuring the same.
 4. Notice to adverse party.
 5. Obligation of witness to attend and give evidence on being notified and tendered his legal fees.—Proviso : as to production of papers.
 6. Consent of parties to examination equivalent to an order.
 7. Return of examinations in Canada.—Use thereof.
 8. And if taken out of Canada.—Use thereof.
 9. Reading examination.
 10. Governor in Council may appoint commissioners for receiving affidavits, &c., within or out of Canada.—Effect of such affidavits. Sub-section 2—Style of commission.
 11. Further powers of commissioners in Canada
 12. Before whom affidavits, &c., may be made out of Canada.—Their effect.

- SEC. 13. Documents purporting to be under the hand and seal of such commissioner or persons to be admitted without proof of that fact.
- 14. Wilfully tendering documents with false seal or signature to be felony.
- 15. Informality not to be an objection to any affidavit, &c., the Court thinks proper to receive it, nor to be set up as defence in case of perjury.
- 16. Supreme Court may adjudge that costs be paid wholly or in part by either party.—Recovery of such costs.
- 17. Sec. 56 of 38 Vic, chap. 11, amended.
- 18. Sec. 58 of 38 Vic., chap. 11, amended.—Words struck out.
- 19. Sec. 61 of 38 Vic., chap. 11, amended.
- 20. Court may refer any matter to Registrar for certain purposes.
- 21. Qualification, exemption, &c., of jurors.
- 22. Number of jurors to be summoned.
- 23. *Tales* in default of jurors
- 24. Writs of execution in addition to those prescribed by general rules or orders—If judge's order is necessary.
- 25. In what case only a person may be taken in execution.
- 26. Writs of and sales under execution to have same effect as like writs from courts of the Province where the property seized lies.
- 27. Like provision as to claims to such property or proceeds of sale.
- 28. Appeals in *habeas corpus* case to be heard early, &c.
- 29. Powers of judges in *habeas corpus* cases.
- 30. On appeal in *habeas corpus* cases, prisoner need not be present in court.—Proviso : if Court orders his appearance.
- 31. Jurisdiction in extradition cases taken away.
- 32. Judges may rule as to costs against the Crown.
- 33. How costs to or against the Crown shall be paid.
- 34. Writ may issue for certain purposes.
- 35. Orders for payment of money, how enforced.
- 36. No attachment for non-payment only.
- 37. Judges may make rules and orders for carrying out this Act.
- 38. Acts 31 Vic., chap. 34, and 33 Vic., chap. 4, as amended, to apply to officers of the said courts at Ottawa.

HER MAJESTY, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :

EVIDENCE.

1. Proceedings for the examination on interrogatories or by commission of persons who cannot for certain reasons conveniently appear in Court.—In case any party to any proceeding had

or to be had in either the Supreme Court or Exchequer Court, is desirous of having therein the evidence of any person, whether a party or not or whether resident within or out of Canada, the court or any judge thereof, if in its or his opinion it is, owing to the absence, age, or infirmity, or the distance of the residence of such person from the place of trial, or the expense of taking his evidence otherwise, or for any other reason convenient so to do, may, upon the application of such party, order the examination of any such person upon oath by interrogatories or otherwise, before the registrar of the said courts, or any commissioner for taking affidavits in the said courts, or any other person, or persons to be named in such order, or may order the issue of a commission under the seal of the court for such examination; and may, by the same or any subsequent order, give all such directions touching the time, place and manner of such examination, the attendance of the witness and the production of papers thereat, and all matters connected therewith, as may appear reasonable.

(2.) The person, whether a party or not, to be examined under the provisions of this Act is hereinafter called a witness.

2. Duty of persons taking such examination.
—**Punishment of witnesses willfully giving false evidence.**—It shall be the duty of every person authorized to take the examination of any witness, in pursuance of any of the provisions of this Act, to take such examination upon the oath of the witness or upon affirmation in any case where affirmation is allowed by law instead of oath; and any witness who wilfully or corruptly gives any false evidence is guilty of perjury, and may be indicted and prosecuted for such offence in any county or district or other judicial division in Canada where such evidence shall have been given, or if the evidence be given out of Canada, in any judicial division in Canada in which he may be apprehended or be in custody.

3. Court or judge may order further examination.—**Penalty on party refusing to aid in procuring the same.**—The court or a judge may, if it be considered for the ends of justice expedient so to do,

order the further examination, before either the court or a judge thereof, or other person, of any witness, and if the party on whose behalf the evidence is tendered neglects or refuses to obtain such further examination, the court or judge in its or his discretion may decline to act on the evidence.

4. Notice to adverse party.—Such notice of the time and place of examination as shall be prescribed in the order, shall be given to the adverse party.

5. Obligation of witness to attend and give evidence on being notified and tendered his legal fees.—When any order shall be made for the examination of a witness and a copy of the order together with a notice of the time and place of attendance signed by the person or one of the persons to take the examination shall have been duly served on the witness and he shall have been tendered his legal fees for attendance and travel, the refusal or neglect to attend for examination or to answer any proper question which may be put to him on examination, or to produce any paper which he has been notified to produce, shall be deemed a contempt of court and may be punished by the same process as other contempts of court; but he shall not be compelled to produce any paper which he would not be compelled to produce or to answer any question which he would not be bound to answer in court.

6. Consent of parties to examination equivalent to an order.—If the parties in any case pending in either of the said courts consent in writing that a witness may be examined within or out of Canada by interrogatories or otherwise, such consent and the proceedings had thereunder shall be as valid in all respects as if an order had been made and the proceedings had thereunder.

7. Return of examinations in Canada.—All examinations taken in Canada, in pursuance of any of the provisions of this Act, shall be returned to the court, and the depositions certified under the hands of the person or one of the persons taking the same may, without further proof, be used in evidence, saving all just exceptions.

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ations taken out of Canada, in pursuance of any of the provisions of this Act, shall be proved by affidavit of the due taking of such examinations, sworn before some commissioner or other person authorized under this or any other Act to receive such affidavit at the place where such examination has been taken, and shall be returned to the court, and the depositions so returned, together with such affidavit, and the order or commission, closed under the hand and seal of the person or one of the persons authorized to take the examination, may without further proof, be used in evidence, saving all just exceptions.

9. Reading examination.—When any examination has been returned, any party may give notice of such return, and no objection to the examination being read shall have effect, unless taken within the time and in the manner prescribed by general order.

10. Governor in Council may appoint commissioners for receiving affidavits, &c., within or out of Canada.—The Governor in Council may, by one or more commissions, from time to time empower such persons as he may think necessary, within or out of Canada, to administer oaths and take and receive affidavits, declarations and affirmations in or concerning any proceeding had or to be had in the Supreme Court, or in the Exchequer Court; and every oath, affidavit, declaration or affirmation taken or made as aforesaid shall be as valid, and of the like effect to all intents, as if it had been administered, taken, sworn, made or affirmed before that one of the said courts in which it is intended to be used, or before any judge or competent officer thereof in Canada.

(2.) Any Commissioner so empowered shall be styled, "A Commissioner for administering oaths in the Supreme Court and in the Exchequer Court of Canada."

11. Further powers of Commissioners in Canada.—Any Commissioner so empowered resident within Canada is authorized to take and receive acknowledgments or recognizances of bail and all other recognizances in the Supreme Court and in the Exchequer Court.

12. Before whom affidavits, &c., may be made out of Canada.—Their effect.—Any oath, affidavit, affirmation or declaration, administered, sworn, affirmed or made out of Canada, before any commissioner authorized to receive affidavits to be used in Her Majesty's High Court of Justice in England, or before any notary public and certified under his hand and official seal, or before the mayor or chief magistrate of any city, borough or town corporate in Great Britain or Ireland, or in any colony or possession of Her Majesty, out of Canada, or in any foreign country, and certified under the common seal of such city, borough or town corporate, or before a judge of any court of supreme jurisdiction in any colony or possession of Her Majesty or dependency of the Crown out of Canada, or before any consul, vice-consul, acting consul pro-consul or consular agent of her Majesty exercising his functions in any foreign place, and certified under his official seal, concerning any proceeding had or to be had in the Supreme Court or Exchequer Court, shall be as valid and of like effect to all intents, as if it had been administered, sworn, affirmed or made before a commissioner appointed under the tenth section of this Act.

13. Documents purporting to be under the hand and seal of such commissioner or persons to be admitted without proof of that fact.—Any document purporting to have affixed, imprinted or subscribed thereon or thereto the signature of any commissioner appointed under this Act or the signature of any such commissioner authorized to receive affidavits to be used in Her Majesty's High Court of Justice in England, as aforesaid, or the signature, and official seal of any such notary public as aforesaid, or the signature of any such mayor or chief magistrate as aforesaid, and the common seal of the corporation, or the signature of any such Judge as aforesaid, and the seal of the court, or the signature and official seal of any such consul, vice-consul, acting consul, pro-consul or consular agent as aforesaid, in testimony of any oath, affidavit, affirmation or declaration having been administered, sworn, affirmed or made by or before him, shall be admitted in evidence without proof of any such signature or seal being the signature or the signature and seal of the person whose signature or signature and seal the same purport to be, or of the official character of such person.

&c., may be effect.—Any oath, administered, sworn, by any commissioner in Her Majesty's before any notary official seal, or before any, borough or town or in any colony or a, or in any foreign on seal of such city, judge of any court of possession of Her out of Canada, or consul pro-consul or ing his functions in his official seal, con- had in the Supreme id and of like effect red, sworn, affirmed ted under the tenth

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14. **Wilfully tendering documents with false seal or signature, to be perjury.**—If any person tenders in evidence any such document as aforesaid with a false or counterfeit seal or signature thereto, knowing the same to be false or counterfeit, he shall be deemed guilty of felony, and shall be subject to the punishment by law provided for felony.

15. **Informality not to be an objection to any affidavit, etc., if the Court or Judge thinks proper to receive it nor to be set up as a defence in case of perjury.**—No informality in the heading or other formal requisites to any affidavit, declaration or affirmation made or other Act, shall be an objection to its reception in evidence taken before any person under any provision of this or any in the Supreme Court or the Exchequer Court, if the court or judge before whom it is tendered think proper to receive it: and in case the same be actually sworn to, declared or affirmed by the person making the same before any person duly authorised thereto, and be received in evidence, no such informality shall be set up to defeat an indictment for perjury.

APPEAL IN CONTROVERTED ELECTION CASES.

16. **Supreme Court may adjudge that costs be paid wholly or in part by either party.**—In controverted election appeals under "*The Dominion Controverted Elections Act, 1874*," the Supreme Court may adjudge the whole or any part of the costs in the court below to be paid by either of the parties. Any order directing the payment of such costs shall be certified by the registrar to the court in which the petition was filed, and the same proceedings for the recovery of such costs may thereupon be taken in the last mentioned court as if the order for payment of costs had been made by that court or by the judge before whom the petition was tried.

SPECIAL JURISDICTION.

17. **Sec. 56 of 38 V. c. 11, amended.**—The fifty-sixth section of "*The Supreme and Exchequer Court Act*" is hereby amended by inserting after the word "shall" in the third line, the words following "at the request of the parties, and may without such request if he thinks fit."

18. Sec. 58 of 38 V. c. 11, amended—Words added.—The fifty-eighth section of "*The Supreme and Exchequer Court Act*," is hereby amended by adding after the words "Crown alone" in the eighth line, the words following: 'And in all cases in which demand shall be made or relief sought in respect of any matter which might in England be the subject of a suit or action in the Court of Exchequer on its plea side against any officer of the Crown:' and also by striking out the words "or any officer of the Crown" at the end of the said section.

JUDGES.

19. Sec. 61 of 38 V. c. 11, amended.—The sixty-first section of "*The Supreme and Exchequer Court Act*," is hereby amended by striking out the words "on its revenue side" and inserting in lieu thereof "in similar suits."

EXCHEQUER COURT REFERENCES.

20. Court may refer any matter to Registrar for certain purposes.—The Exchequer Court may for the purposes of taking account and making enquiries, refer any cause, matter or petition over which it has, under any Act, jurisdiction, to the Registrar or any other officer of the Court, or to any other referee.

EXCHEQUER COURT JURORS.

21. Qualification, exemption, etc., of jurors.—The qualifications, exemptions and mode of summoning jurors shall be according to the law applicable to the Superior Courts of the Province where the issues are to be tried.

22. Number of jurors to be summoned.—The number of jurors to be summoned on any panel under a writ of *venire facias*, issued pursuant to the fifteenth section of "*The Supreme and Exchequer Court Act*" shall never be less than double nor more than three times the number of jurors required in civil cases to form a jury for the trial of causes in the Superior Courts of the Province where the issues are to be tried, but within these limits, the Judge who orders the

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writ of *venire facias* to issue, may exercise his discretion as to the number to be summoned.

23. Tales in default of jurors.—When from challenges or other causes, a complete jury for the trial of any cause cannot be obtained, the presiding Judge may direct the Sheriff or other proper officer to summon and return a *tales* according to the law applicable to the Superior Courts of the Province where the issues are to be tried.

24. Writs of execution in addition to those prescribed by General Rules or orders.—In addition to any writs of execution which may be prescribed by general rules or orders, the Exchequer Court may issue writs of execution against the person or the goods, lands or other property of any party, of the same tenor and effect as those which may be issued by any of the superior courts of the province in which any judgment or order is to be executed ; and where by the law of the province a judge’s order is required for the issue of any writ of execution, a judge of the Exchequer Court shall, as regards like executions to issue out of that Court, have power to make a similar order.

25. In what case only a person may be taken in execution.—No person shall be taken in custody under process of execution for debt issued out of the Exchequer Court at the suit of the Crown, unless he could be taken in custody under the laws of the province in which he happens to be, in a similar case between subject and subject ; and any person taken in custody under such process may be discharged from imprisonment upon the same grounds as would entitle him to be discharged under the laws in force relating to imprisonment for debt in the province in which he is in custody.

26. Writs of and sales under execution.—All writs of execution against real or personal property as well those which may be prescribed by general rules and orders as those authorized by the twenty-fourth section of this Act, shall unless otherwise provided by general rule or order, be executed as regards the property liable to execution and the mode of seizure and sale, as nearly as possible in the same manner as similar writs issued out of the Superior Courts of

the Province in which the property to be seized is situated are by the law of the Province required to be executed ; and such writs shall bind property in the same manner as such similar writs, and the rights of purchasers thereunder shall be the same as those of purchasers under such similar writs.

27. Like provision as to claims to such property or proceeds of sale. - Any claim made by any person to property seized under a writ of execution issued out of the Exchequer Court or to the proceeds of the sale of such property shall, unless otherwise provided by general rule or order, be heard and disposed of as nearly as may be according to the procedure applicable to like claims to property seized under similar writs of execution issued out of the Courts of the Province.

HABEAS CORPUS.

28. Appeals in Habeas Corpus case to be heard early, etc.—An appeal to the Supreme Court in any *habeas corpus* matter under the said Act shall be heard at an early day whether in or out of the prescribed sessions of the Court.

29. Powers of Judges in Habeas Corpus Cases.—In any *habeas corpus* matter under the said Act, before a Judge of the Supreme Court, and on any appeal to the Supreme Court in any *habeas corpus* matter under the said Act, the Judge or Court shall have the same power to bail, discharge or commit the prisoner or person, or to direct him to be detained in custody or otherwise to deal with him as any Court, Judge or Justice of the Peace having jurisdiction in any such matters in any Province of Canada.

30. On Appeal in Habeas Corpus Cases, prisoner need not be present in Court.—On any appeal to the Supreme Court in any *habeas corpus* matter under the said Act, it shall not be necessary, unless the Court shall otherwise order, that any prisoner or person, on whose behalf such appeal is made, be present in Court ; but the prisoner or person shall remain in the charge or custody to which he was committed or had been remanded, or in which he was at the time of giving the notice of appeal,

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unless at liberty on bail by order of a Judge of the Court which refused the application or of a Judge of the Supreme Court: Provided that the Supreme Court may, by writ or order, direct that such prisoner or person shall be brought before it.

31. Jurisdiction in Extradition Cases taken away.—So much of the said Act as confers jurisdiction, whether original or appellate, on the Supreme Court or any Judge thereof in *habeas corpus* matters arising out of any claim for extradition made under any treaty, is hereby repealed.

COSTS.

32. Judges may rule as to Costs against the Crown.—The Judges of the Supreme Court, or any five of them, may, under the seventy-ninth section of the said Act from time to time make general rules and orders for awarding and regulating costs in each of the said Courts in favor of and against the Crown as well as the subject.

33. How Costs to or against the Crown shall be paid.—Any costs adjudged to Her Majesty in either of the said Courts shall be paid to the Receiver-General, and the Receiver-General shall pay out of any moneys in his hands for the time being legally applicable thereto, or which may be voted by Parliament for the purpose, any costs awarded to any person against Her Majesty.

CERTIORARI.

34. Writ may issue for certain purposes.—A writ of *certiorari* may, by order of the Supreme Court or a Judge thereof, issue out of the said Court to bring up any papers or other proceedings, had or taken before any Court, Judge or Justice of the Peace, and which may be considered necessary with a view to any inquiry, appeal or other proceeding had or to be had before the Supreme Court.

MISCELLANEOUS.

35. Orders for payment of money, how enforced.—An order in either the Supreme Court or the

162 SUPREME AND EXCHEQUER COURT AMENDMENT ACT.

Exchequer Court for payment of money, whether for costs or otherwise, may be enforced by the same writs of execution as a judgment in the Exchequer Court.

36. No attachment for non-payment only.—No attachment as for contempt shall issue in either the Supreme Court or the Exchequer Court for the non-payment of money only.

37. Judges may make Rules and Orders for carrying out this Act.—The Judges of the Supreme Court shall have the same power to make rules and orders for carrying out the purposes of this Act as they possess under the seventy-ninth section of "*The Supreme and Exchequer Court Act*," in reference to the purposes of that Act, and nothing in this Act contained shall be construed to affect or impair the powers given under the said section.

38. Acts 31 Vic. ch. 34 and 33 Vic. ch. 4, as amended, to apply to Officers of the said Courts at Ottawa.—The provisions of "*The Canada Civil Service Act, 1868*," and any Acts amending the same, and of the "*Act for better ensuring the efficiency of the Civil Service of Canada, by providing for the superannuation of persons employed therein, in certain cases*," and any acts amending the same, shall, so far as applicable, extend and apply to the officers, clerks and servants of the Supreme Court of Canada and of the Exchequer Court of Canada, at the seat of Government.

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42 VICTORIA.

CHAP. XXXIX.

AN ACT

FURTHER TO AMEND "THE SUPREME AND EXCHEQUER
COURT ACT."

[Assented to 15th May, 1879.]

PREAMBLE.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. Appeal in equity cases, or in the nature of equity cases, originally instituted in any Superior Court, in any Province except Quebec.—Subject to the provisions hereinafter contained, an appeal shall lie to the Supreme Court of Canada from any decree, decretal order, or order made in any suit, cause, matter, or other judicial proceeding originally instituted in any Superior Court of equity in any Province of Canada, other than the Province of Quebec, and from any decree, decretal order, or order in any action, suit, cause, matter, or judicial proceeding in the nature of a suit or proceeding in equity which shall have been originally instituted in any Superior Court in any Province of Canada, other than the Province of Quebec.

2. No appeal from orders made in exercise of judicial discretion. Exception, as to equity cases.—No appeal shall lie from any order made in any action, suit, cause, matter or other judicial proceeding which shall have been made in the exercise of the judicial discretion of the Court or Judge making the same; but this exception shall not include decrees and decretal orders in suits, causes, matters, or other judicial proceedings in equity, or in actions, or suits, causes, matters, or other judicial proceedings in the nature of suits or proceedings in equity instituted in any Superior Court.

3. Appeal from final judgments only in Superior Courts of Law, Except in Quebec.—An appeal shall lie from final judgments only in actions, suits, causes, matters and other judicial proceedings originally instituted in the Superior Court of the Province of Quebec, or originally instituted in a Superior Court of common law in any of the Provinces of Canada other than the Province of Quebec.

4. Appeal from motion to set aside, only way of appeal from award.—An appeal shall lie to the Supreme Court from the judgment, rule, order or decision upon any motion to set aside an award, or upon any motion by way of appeal from an award made in any Superior Court of law or equity in any of the Provinces of Canada other than the Province of Quebec.

5. Appeal to lie only to highest Court of last resort in the province, Except, &c.—Except as hereinafter provided for, no appeal shall lie to the Supreme Court, but from the highest Court of last resort having jurisdiction in the Province in which the action, suit, cause, matter or other judicial proceeding was originally instituted, whether the judgment or decision in such action, suit, cause, matter or other judicial proceeding may or may not have been a proper subject of appeal to such highest Court of last resort.

6. Appeal by leave, from final judgment of a Superior Court, without intermediate appeal to Provincial Court of Appeal. Except in Quebec.—An appeal shall lie to the said Supreme Court by leave of the said last-mentioned Court, or a Judge thereof, from any decree, decretal order, or order made or pronounced by a Superior Court of equity, or made or pronounced by any equity Judge or by any Superior Court in any action, cause, matter or other judicial proceeding in the nature of a suit or proceeding in equity, and from the final judgment of any Superior Court of any Province other than the Province of Quebec, in any action, suit, cause, matter or other judicial proceeding originally commenced in such Superior Court, without any intermediate appeal being had to any intermediate Court of Appeal in the Province.

7. Preceding section not to prevent appeals in equity cases, above provided for.—Nothing in the next preceding section contained shall be taken to prejudice or affect the appeal as of right from all final judgments, and from decrees, decretal orders, and orders in suits, causes and matters or other judicial proceedings in equity, already provided for by this Act.

8. Provision as to amount or nature of matter in controversy in Quebec.—No appeal shall be allowed from any judgment rendered in the Province of Quebec in any action, suit, cause, matter, or other judicial proceeding, wherein the matter in controversy does not amount to the sum or value of two thousand dollars, unless such matter, if less than that amount, involves the question of the validity of an Act of the Parliament of Canada, or of the Legislature of any of the Provinces of Canada, or of an Ordinance or Act of any of the Councils or Legislative bodies of any of the Territories or Districts of Canada, or relates to any fee

of office, duty, rent, revenue or any sum of money payable to Her Majesty, or to any title to lands or tenements, annual rents or such like matters or things where the rights in future might be bound; Provided that such appeals shall be from the Court of Queen's Bench only.

9. Interpretation of words "final judgment."—The words "final judgment" in this Act contained, mean any judgment, rule, order or decision, whereby the action, suit, cause, matter or other judicial proceeding, is finally determined and concluded.

10. Appeal on preliminary objection to an Election Petition in certain cases. Proviso, appeal not to operate as stay of proceedings. Proviso as to cases in litigation.—An appeal shall lie to the Supreme Court from the judgment, rule, order or decision of any Court or Judge on any preliminary objection to an Election Petition, the allowance of which shall have been final and conclusive, and which shall have put an end to the petition, or which would, if allowed, have been final and conclusive and have put an end to the petition; Provided always, that an appeal in the last-mentioned case shall not operate as a stay of proceedings or to delay the trial of the petition, unless the Court, or a Judge of the Court appealed from, shall so order; and provided also, that no appeals shall be allowed under this section in cases in litigation and now pending, except cases when the appeal has been allowed and duly filed.

11. Appeals in certain classes of cases not affected.—Appeals in Exchequer cases, cases of rules for new trials and cases of mandamus, habeas corpus and municipal by-laws shall not be in way affected by the provisions of this Act.

12. As to administration of oath of office to a Judge of the Court.—The oath of office to be taken by a Judge of the said Supreme and Exchequer Court previously to his exercising the duties of his office as required by "*The Supreme and Exchequer Court Act*," may in the absence or illness of the Chief Justice, be administered by any other Judge of the Court present at Ottawa.

13. Intent of Act as to appeals in cases in equity or in the nature of cases in equity, declared.—It is hereby declared that the true construction and meaning of the said Supreme and Exchequer Court Act shall be taken and deemed to have been and to be that all orders, decretal orders, decrees and decisions of any Superior Court made in any suit, cause, matter or other judicial proceeding in equity, or in any action, suit, cause, matter or other judicial proceeding in the nature of a suit or proceeding in equity are, and always have been, the proper subjects of appeal to the said Supreme Court, subject, however, to the provision in the said Act contained, that an appeal shall lie only from the highest Court of final resort in the Province; Provided always, that nothing herein contained shall apply to any case already argued and now standing for judgment, or to any case set down for hearing, to which objection as to the jurisdiction of the Court has been made.

14. Section 31 of the S. C. A. amended.—Section thirty-one of "*The Supreme and Exchequer Court Act*" is hereby amended by inserting after the word "thereof," in the sixth line, the words, "or to the satisfaction of the Supreme Court or a Judge thereof."

15. Appeals for hearing, how to be entered by Registrar.—The appeals set down for hearing shall be entered, by the Registrar of the Court, on a list, divided into three parts, and to be numbered and headed as follows: "Number one, Maritime Province cases;" "Number two, Quebec cases;" "Number three, Ontario cases." And it shall be the duty of the Registrar to enter all cases from the Maritime Provinces on part numbered one, and all cases from the Province of Quebec on part numbered two, and all cases from the Provinces of Ontario, Manitoba and British Columbia on part numbered three, in the order in which they are respectively received; and the said cases shall be taken and disposed of in the order in which they are so entered, unless otherwise ordered by the Court.

16. Court to hold three sessions annually.—Section thirteen of "*The Supreme and Exchequer Court Act*," is hereby repealed, and the following is substituted in lieu thereof:—

"13. The said Supreme Court, for the purpose of hearing and determining appeals, shall hold annually, at the City of Ottawa, three sessions; the first beginning on the third Tuesday of February; the second, on the first Tuesday in May, and the third, on the fourth Tuesday in October, in each year, and each of the said sessions shall be continued until the business before the Court shall have been disposed of."

17. June session of present year not to be interfered with.—Section sixteen of the Act shall not apply to interfere in any way with the sitting of the said Court about to be held in the month of June in the present year, which shall be held as if section Sixteen of this Act had not been passed.

18. Section 12 of S. C. A. amended. Proviso as to reading judgment of absent judges.—Section 12 (twelve) of the said Act, passed in the thirty-eighth year of Her Majesty's Reign, is hereby amended by adding thereto the following proviso, which shall be read as if the same had been originally part of such twelfth section:—

Provided always, that it shall not be necessary for all the Judges who may have heard the argument in any case to be present in order to constitute the Court for delivery of judgment in such case, but that notwithstanding the absence of any of such Judges, from illness or any other cause, judgment may be delivered by a majority of the Judges who were present at the hearing of the appeal, and any of the Judges who may have heard the appeal, and may be absent at the delivery of judgment, may cause to be delivered to any Judge present at the delivery of judgment, his judgment in writing, to be read or announced in open Court, and then delivered to or left with the Registrar or Reporter of the Court.

19. Short Title.—This Act may be cited as "*The Supreme Court Amendment Act of 1879.*"

43 VICTORIA.

CHAP. XXXIV.

(Stats. 1880, page 250.)

AN ACT

FURTHER TO AMEND "THE SUPREME AND EXCHEQUER COURT ACT."

[Assented to 7th May, 1880.]

PREAMBLE.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. Necessary amendments may be made pending appeal.—At any time during the pending of any appeal before the Supreme Court, the Court may, upon the application of any of the parties, or without any such application, make all such amendments as may be necessary for the purpose of determining the existing appeals, or the real question or controversy between the parties as disclosed by the pleadings, evidence or proceedings.

2. At whose instance amendment may be made.—Any such amendment may be made whether the necessity for the same is, or is not, occasioned by the defect, error, act, default, or neglect of the party applying to amend.

3. As to costs, etc.—All such amendments shall be made upon such terms as to payment of costs, postponing the hearing and otherwise, as to the Court may seem just.

4. Section 22 of 38 Vlo., ch. II, repealed.—Section twenty-two of the "*The Supreme and Exchequer Court Act*" is hereby repealed, and the following section is substituted therefor :—

"22. New trial may be ordered.—In all cases of appeal the Court may, in its discretion, order a new trial, if the ends of justice may seem to require it, although such new trial may be deemed necessary upon the ground that the verdict is against the weight of evidence."

5. Short title.—This Act may be cited as "*The Supreme and Exchequer Court Amendment Act, 1880.*"

MS.

MANUSCRIPT NOTES.

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PETITION OF RIGHT ACT, 1876.



39 VICTORIA.

CHAP. XXVII.

AN ACT

TO MAKE FURTHER PROVISION FOR THE INSTITUTION
OF SUITS AGAINST THE CROWN BY PETITION
OF RIGHT.

[Assented to 12th April, 1876.]

- SECTION 1. Preamble.—33 Vic., chap. 12.—38 Vic., chap. 11.
38 Vic., chap. 12, repealed.
2. Form of petition of right.
 3. To be left for Governor's *fiat*, without fee.
 4. Where and how to be filed, &c., after *fiat*.
 5. No preliminary inquisition.—Time for filing defence or demurrer.
 6. Service on other parties affected by the petition.—No *scire facias*.—Time for defence or demurrer.
 7. What defence may be raised.
 8. Certain issues triable without a jury.
 9. Where the trial may be had and evidence taken.
 10. Judgment by default on either side.—Proviso: may be set aside on terms.
 11. Form of judgment.
 12. If for suppliant, to have effect of *amoveas manus*.
 13. Provisions of 33 Vic., chap. 11, to apply.
 14. Judges of Supreme Court to make rules, &c.—To what such rules may extend.—Their effect.—To be laid before Parliament.—May be suspended by Governor in Council or either House of Parliament.
 15. English rules to apply in default of rules under this Act.
 16. Payment of costs against Crown.

- Sec. 17.** Costs may be awarded to suppliant against Crown or other party.—How recoverable.—Judgment for relief or order for costs to suppliant to be certified to Receiver-General.—Certificate may be left with Minister of Finance.
- 18.** Payment by Receiver-General.
- 19.** Act not to affect Her Majesty's prerogative rights—(2)—Prevent proceeding as heretofore; (3)—give remedy not allowed in England before 23 and 24 Vic., chap. 34, or, in any case referred to arbitration under statute.
- 20.** As to petitions of right presented under 38 Vic., chap. 12.
- 21.** Interpretation "relief."—"Court."—"Judge"
- 22.** Short title.

Preamble.—WHEREAS, since the passing of the "*Petition of Right Act, Canada, 1875*," "*The Supreme and Exchequer Court Act*" has come into force: and whereas it is expedient to make further and other provision for the institution of suits against the Crown in Canada by petition of right: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. 38 Vic. ch. 12.—"*The Petition of Right Act, Canada, 1875*," is hereby repealed.

2. **Form of Petition of Right.**—A petition of right may be addressed to Her Majesty to the effect of the form No. 1 in the schedule to this Act annexed.

3. **To be left for Governor's fiat, without fee.**—The petition shall be left with the Secretary of State of Canada, for submission to the Governor General in order that he may consider it, and, if he shall think fit, grant his fiat that right be done; and nothing shall be payable by the suppliant on leaving or upon receiving back the petition.

4. **Where and how to be filed, etc., after fiat.**—Upon the Governor General's fiat being obtained the petition and fiat shall be filed in the Exchequer Court of Canada, which Court shall have exclusive original cognizance of such petitions and thereafter a copy of the petition and fiat shall be left at the office of Her Majesty's Attorney General of Canada, with an endorsement thereon to the effect of the form No. 2 in the schedule to this Act annexed.

5. No preliminary inquisition—Time for filing defence or demurrer.—There shall be no preliminary inquisition finding the truth of the petition, or the right of the suppliant, but the statement in defence or demurrer, or both, shall be filed within four weeks after service, or such further time as shall be allowed by the Court, or a Judge.

6. Service on other parties affected by the petition.—In case the petition be presented for the recovery of any real or personal property, or any right in or to the same, which shall have been granted away or disposed of by or on behalf of Her Majesty, or Her Predecessors, a copy of the petition and fiat shall be served upon or left at the last, or usual or last known place of abode of the person in the possession or occupation of such property or right, endorsed with a notice to the effect of the form No. 3 set forth in the schedule to this Act annexed ; and it shall not be necessary to issue any *scire facias* or other process to such person for the purpose of requiring him to file his statement in defence, but if he intend to contest the petition he shall within four weeks after such service or leaving as aforesaid, or such further time as shall be allowed by the Court or a Judge, file his statement in defence, or demurrer, or both.

7. What defence may be raised.—The statement in defence, or demurrer may raise, besides any legal or equitable defences in fact or in law available under this Act, any legal or equitable defences which would have been available had the proceeding been a suit or action in a competent Court between subject and subject, and any grounds of defence which would be sufficient on behalf of Her Majesty, may be alleged on behalf of any such person, as aforesaid.

8. Certain issues triable without a jury.—Any issue of fact or assessment of damages to be tried or had under this Act, shall be tried or had by a Judge without a jury.

9. Where the trial may be had and evidence taken.—The trial of any issue of fact or assessment of damages may by order of the Court or a Judge, be had

partly at one place and partly at another ; and the evidence of any witness may, by like order, be taken by commission or on examination or affidavit.

10. Judgment by default on either side.—In case of failure on behalf of Her Majesty or of such other person as aforesaid, to file a statement in defence or demurrer in due time, the suppliant shall be at liberty to apply to the Court or a Judge for an order that the petition may be taken as confessed ; and it shall be lawful for the Court or Judge, on being satisfied that there has been such failure, to order that the petition be taken as confessed as against Her Majesty, or such other person, and thereupon the suppliant may have judgment ; Provided always that such judgment may afterwards be set aside by the Court or a Judge, in their or his discretion, upon such terms as to them or him shall seem fit.

11. Form of judgment.—The judgment on every petition of right, shall be that the suppliant is not entitled to any portion, or that he is entitled to the whole or to some specified portion of the relief sought by his petition, or to such other relief, and upon such terms and conditions, if any as may be just.

12. If for suppliant, to have effect of *amoveas manus*.—In all cases in which the judgment commonly called a judgment of *amoveas manus*, was formerly given in England upon a petition of right, a judgment that the suppliant is entitled to relief as herein provided, shall be of the same effect as such judgment of *amoveas manus*.

13. Provisions of 38 Vic. ch. 11, to apply.—All the provisions of "*The Supreme and Exchequer Court Act*" not inconsistent with this Act shall extend and apply to the jurisdiction by this Act conferred in like manner as if such jurisdiction had been conferred on the Exchequer Court by the fifty-eighth section of the said Act.

14. Judges of Supreme Court to make rules, etc.—The Judges of the Supreme Court or any five of them may, from time to time make general rules and orders for regulating in every particular the pleading, practice, procedure and costs on petitions of right, and for the effectual

execution and working of this Act and the attainment of the intention and object thereof, and may from time to time alter and amend any rules and orders, and make other rules and orders instead thereof; and such rules and orders may extend as well to matters provided for as to any matter not provided for by this Act, but for which it may be found necessary to provide in order to ensure the proper working of this Act and the better attainment of the objects thereof; and all such rules and orders (being consistent with such express provisions of this Act as are not subject to alteration by rules or orders) shall have the force and effect of law; Provided that copies of all such rules and orders shall be laid before both Houses of Parliament at the next session thereof; Provided also that it shall be lawful for the Governor-General in Council by proclamation inserted in the *Canada Gazette*, or for either House of Parliament by any resolution passed at any time within thirty days after such Rules and Orders have been laid before Parliament, to suspend any rule or order made under this Act, and such rule or order shall thereupon cease to have force or effect until the end of the then next session of Parliament.

15. English rules to apply in default of rules under this Act.—In default of other provision either by this Act or by general rules and orders made under the authority of this Act, the rules of pleading, practice and procedure in force with regard to petitions of right in England shall, as to all matters, including the question of costs, so far as applicable, and unless the court or a judge otherwise order, apply and extend to a petition of right filed hereunder.

16. Payment of costs against the Crown.—Any costs adjudged to Her Majesty on a petition of right shall be paid to the Receiver General.

17. Costs may be awarded to suppliant against Crown or other party.—How recoverable, &c.—Upon any such petition of right, the suppliant shall be entitled to costs against Her Majesty, and also against any other person appearing or pleading or answering to any such petition of right, in like manner and subject to the same rules, regulations and provisions, restrictions and discretion, so far as they are appli-

cable, as are or may be usually adopted, or in force, touching the right to recover costs in proceedings between subject and subject ; and for the recovery of any such costs from any such person, other than Her Majesty, appearing or pleading or answering in pursuance hereof to any such petition of right, such and the same remedies and writs of execution as are authorized for enforcing payment of costs upon rules, orders, decrees or judgments in personal actions between subject and subject, shall and may be prosecuted, sued out, and executed on behalf of such suppliant, and whenever on a petition of right judgment is given that the suppliant is entitled to relief and there is no appeal, and whenever upon appeal judgment is affirmed or given that the suppliant is entitled to relief, and whenever any rule or order is made, entitling the suppliant to costs, any judge shall upon application after the lapse of fourteen days from the making, giving, or affirming of such judgment, rule or order, certify to the Receiver General the tenor and purport of the same, to the effect of the form No. 4 in the schedule to this Act annexed, and such certificate may be sent to, or left at the office of the Minister of Finance.

18. Payment by Receiver General.—The Receiver General shall pay out of any moneys in his hands for the time being legally applicable thereto, or which may be thereafter voted by Parliament for that purpose, the amount of any moncys or costs which shall have been so certified to him to be due to any suppliant.

19. Act not to affect Her Majesty's prerogative rights.—Prevent proceeding as heretofore, or.—Give remedy not allowed in England before 23 & 24 Vic. ch. 34, or in any case referred to arbitration under Statute.—Nothing in this Act contained shall.—

1. Prejudice or limit otherwise than is herein provided, the rights, privileges or prerogatives of Her Majesty or Her Successors ; or
- 2 Prevent any suppliant from proceeding as before the passing of this Act ; or
3. Give to the subject any remedy against the crown (a)

in any case in which he would not have been entitled to such remedy in England under similar circumstances by the laws in force there prior to the passing of the Imperial Statute twenty-third and twenty-fourth Victoria, chapter thirty-four, intituled: "*An act to amend the law relating to Petitions of Right, to simplify the proceedings and to make provisions for the costs thereof,*" or (b) in any case in which, either before or within two months after the presentation of the petition, the claim is, under the statutes in that behalf, referred to arbitration by the head of the proper department, who is hereby authorized with the approval of the Governor in Council to make such reference upon any petition of right.

20. As to petitions of right presented under 38 Vic. ch. 12.—All petitions of right which may have been presented under the provisions of the Act hereby repealed shall be held and taken to be presented under this Act at the expiration of thirty days from the passing hereof, and shall be by the Secretary of State entitled in the Exchequer Court of Canada.

21. Interpretation — "Relief" — "Court" — "Judge."—The word "relief" comprehends every species of relief claimed or prayed for in a petition of right, whether a restitution of any incorporeal right, or a return of lands or chattels or a payment of money or damages or otherwise;

The word "court" means the Exchequer Court of Canada, and the word "judge" means the chief justice or any judge of the same court, unless there be any thing in the context indicating that such words are used in another sense.

22. Short title.—In citing this Act it shall be sufficient to use the words "*The Petition of Right Act 1876.*"

SCHEDULE

FORMS REFERRED TO IN THE FOREGOING ACT.

No. 1.

PETITION OF RIGHT.

In the Exchequer Court of Canada.

To the Queen's most Excellent Majesty :

County (or District) of (*place proposed for trial*) to wit :

The humble petition of A. B. of sheweth
that (*state with convenient certainty the facts on which petitioner
relies as entitling him to relief*).

CONCLUSION.

Your suppliant therefore humbly prays that (*state the relief
claimed.*)

Dated day of A. D.

(Signed)

A. B.

or C. D., Counsel for A. B.

No 2.

The suppliant prays for a statement in defence on behalf
of Her Majesty, within four weeks after the date of service
hereof, or otherwise that the petition may be taken as con-
fessed.

No. 3.

To A. B.

You are hereby required to file a statement in defence to
the within petition in Her Majesty's Exchequer Court of
Canada within four weeks after the date of service hereof.

Take notice, that if you fail to file a statement in defence
or demurrer in due time, the said petition may, as against
you, be ordered to be taken as confessed.

Dated the day of A. D.

No. 4.

To the Honourable the Receiver General.

Petition of right of A. B. in Her Majesty's Exchequer
Court of Canada at.....

I hereby certify that on the day of
A. D. it was by the said Court adjudged (*or ordered*)
that the above named suppliant was entitled to, etc.

(*Judge's signature.*)

SUPREME COURT RULES.

RULES AND ORDERS

FOR

REGULATING THE PROCEDURE OF THE SUPREME COURT OF CANADA.

TABLE OF RULES.

- RULE** 1. Filing Case.
2. Case to contain reasons for judgment.
 3. Case to contain copy of any order enlarging time.
 4. Case may be remitted to Court below.
 5. Motion to dismiss for delay.
 6. Certificate of security given.
 7. Case to be printed and twenty-five copies to be deposited with Registrar.
 8. Form of case.
 9. Case not to be filed unless rules complied with.
 10. Certified copies of original documents and exhibits to be deposited with Registrar.
 11. Notice of hearing of appeal.
 12. Special notice convening Court, form of.
 13. Form of notice of hearing.
 14. When to be served.
 15. How notice of hearing to be served.
 16. "The Agent's Book."
 17. Suggestion by Respondent who appears in person.
 18. If no suggestion filed.
 19. Suggestion by Respondent who elects to appear by Attorney.
 20. Election of domicile by Respondent who appears in person.
 21. Service when Respondent appears in person without electing domicile.
 22. Changing Attorney or Solicitor.
 23. Factums to be deposited with Registrar.
 24. What to contain.
 25. How to be printed.

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- RULE 20.** Motion by Respondent to dismiss appeal on ground of delay in filing factum.
27. Appellant may inscribe *ex parte* if factum not filed.
 28. Setting aside inscription *ex parte*.
 29. Registrar to seal up factums first deposited.
 30. Interchange of factums.
 31. Registrar to inscribe appeals for hearing.
 32. Counsel at hearing.
 33. Postponement of hearing.
 34. Default by parties in attending hearing.
 35. How orders to be signed and dated.
 36. Adding parties by suggestion.
 37. Suggestion may be set aside.
 38. Determining questions of fact arising on motion.
 39. Motions.
 40. Notice of motion how served.
 41. Affidavits in support of motion.
 42. Giving further time.
 43. Setting down motions.
 44. Appeal abandoned by delay.
 45. Rules applicable to exchequer appeals.
 46. Rules not applicable to criminal appeals, nor habeas corpus.
 47. Case in criminal appeals and habeas corpus.
 48. When case to be filed.
 49. Notice of hearing in criminal appeals and in appeals in matters of habeas corpus.
 50. Preceding rules not applicable in election cases.
 51. Printing record in election appeals.
 52. Copies of record.
 53. Factum in election appeals.
 54. When to be deposited.
 55. Order dispensing with printing of record or factum in election appeals.
 56. Fees to be paid Registrar.
 57. Costs.
 58. Court or Judge may order payment of fixed sums for costs.
 59. How payment of costs may be enforced.
 60. Contempts, how punished.
 61. Cross appeals.
 62. Notice to be given.
 63. Factum in cross appeals.
 64. Translation of factum.
 65. Translation of judgments and opinion of the Judges of Court below.
 66. Payment of money into Court.
 67. Payment of money out of Court.
 68. How made
 69. Formal objections.
 70. Extending or abridging time.
 71. Registrar to keep necessary books.
 72. Computation of time.
 73. Adjournment if no quorum.
 74. Christmas vacation.
 75. Long vacation.
 - 76 & 77. Interpretation.

In pursuance of the provisions contained in the 79th section of the 38th Victoria, chapter 11, intituled "An Act to establish a Supreme Court and a Court of Exchequer for the Dominion of Canada," it is ordered that the following rules in respect of the matters hereafter mentioned shall be in force in the Supreme Court of Canada :

SUPREME COURT.

APPEALS.

RULE 1.

Filing Case.—The first proceeding in appeal in this Court shall be the filing in the office of the Registrar of a case, pursuant to section 29 of the Act, certified under the seal of the Court appealed from.

The Registrar or Clerk of the Court appealed from should be careful to comply with the section of the statute referred to. For the sake of procuring uniformity in the certificates received from the various Courts, a form is here given.

FORM OF CERTIFICATE REQUIRED BY RULE 1

IN THE COURT OF APPEAL.

[or as the case may be].

Canada, }
Province of Ontario. }
[or as the case may be].

.....

Plaintiffs (Appellants);

And

.....

Defendants (Respondents).

I, the undersigned Registrar [or as the case may be] of the above Court, hereby certify to the Registrar of the Supreme Court of Canada that the foregoing document from page..... to inclusive is the case stated and agreed upon by the parties [or settled by the

Honorable Mr. Justice, *as the case may be*] pursuant to section 29 of the Supreme and Exchequer Court Act and the Rules of Practice of the Supreme Court of Canada for the purpose of an appeal to the said Supreme Court in a certain cause in the Court of Appeal for Ontario [*or as the case may be*], wherein were plaintiffs [appellants or respondents, *as the case may be*] and defendants [respondents or appellants, *as the case may be*].

IN TESTIMONY WHEREOF, &c.

[L.S.]

.....

RULE 2.

Case to contain reasons for judgment.—The case, in addition to the proceedings mentioned in the said section 29, shall invariably contain a transcript of all the opinions or reasons for their judgment delivered by the Judges of the Court or Courts below, or an affidavit that such reasons cannot be procured, with a statement of the efforts made to procure the same.

RULE 3.

Case to contain copy of any order enlarging time.—The case shall also contain a copy of any order which may have been made by the Court below or any Judge thereof enlarging the time for appealing.

RULE 4.

Case may be remitted to Court below.—The Court, or a Judge thereof, may order the case to be remitted to the Court below, in order that it may be made more complete by the addition thereto of further matter.

RULE 5.

Motion to dismiss for delay.—If the appellant does not file his case in appeal with the Registrar within one month after the security required by the Act shall be allowed, he shall be considered as not duly prosecuting his appeal, and the respondent may move to dismiss the appeal pursuant to section 41 of the Act.

RULE 6.

Certificate of security given.—The case shall be accompanied by a certificate under the seal of the Court below, stating that the appellant has given proper security to the satisfaction of the Court whose judgment is appealed from, or of a Judge thereof, and setting forth the nature of the security to the amount of five hundred dollars, as required by the thirty-first section of the said Act, and a copy of any bond or other instrument by which security may have been given shall be annexed to the certificate.

RULE 7.

Case to be printed and 25 copies deposited with Registrar.—The case shall be printed by the party appellant, and twenty-five printed copies thereof shall be deposited with the Registrar for the use of the Judges and officers of the Court.

No provision has been made for the delivery of copies of the printed case to the respondent. But a refusal by appellant's solicitor to deliver several copies to the respondent's solicitor would probably not be looked upon with much favor by the Court, especially if the expense of printing such additional copies were tendered.

RULE 8.

Form of Case.—The case shall be in demy quarto form. It shall be printed on paper of good quality, and on one side of the paper only, and the type shall be small pica leaded, and the size of the case shall be eleven inches by eight and one-half inches, and every tenth line shall be numbered in the margin. An index to the pleadings, depositions and other principal matters shall be added.

RULE 9.

Case not to be filed unless rules complied with.—The Registrar shall not file the case without the leave of the Court or a Judge, if the foregoing order has not been complied with, nor if it shall appear that the press has not been properly corrected, and no costs shall be taxed for any case not prepared in accordance with this order.

RULE 10.

Certified copies of original Documents and Exhibits to be deposited with Registrar.—Together with the case, certified copies of all original documents and exhibits used in evidence in the Court of first instance, are to be deposited with the Registrar, unless their production shall be dispensed with by order of a Judge of this Court ; but the Court or a Judge may order that all or any of the originals shall be transmitted by the officer having the custody thereof to the Registrar of this Court, in which case the appellant shall pay the postage for such transmission.

RULE 11.

Notice of hearing of appeal.—Immediately after the filing of the case, a notice of the hearing of the appeal shall be given by the appellant for the next following session of the Court as fixed by the Act, or as specially convened for hearing appeals according to the provisions thereof, if sufficient time shall intervene for that purpose, and if between the filing of the case and the first day of the next ensuing session there shall not be sufficient time to enable the appellant to serve the notice as hereinafter prescribed, then such notice of hearing shall be given for the session following the then next ensuing session.

RULE 12.

Special notice convening Court, form of.—The notice convening the Court under section 14 of the Act for the purpose of hearing election or criminal appeals, or appeals in matters of *habeas corpus*, or for other purposes, shall, pursuant to the directions of the Chief Justice or Senior Puisne Judge, as the case may be, be published by the Registrar in the *Canada Gazette*, and shall be inserted therein for such time before the day appointed for such special session as the said Chief Justice or Senior Puisne Judge may direct, and may be in the form given in Schedule A to these Rules appended.

RULE 13.

Form of notice of hearing.—The notice of hearing may be in the form given in Schedule B to these Rules appended.

RULE 14.

When to be served.—The notice of hearing shall be served at least one month before the first day of the session at which the appeal is to be heard.

RULE 15.

How notice of hearing to be served.—Such notice shall be served on the attorney or solicitor who shall have represented the respondent in the Court below, at his usual place of business, or on the booked agent, or at the elected domicile of such attorney or solicitor at the City of Ottawa, and if such attorney or solicitor shall have no booked agent or elected domicile at the City of Ottawa, the notice may be served by affixing the same in some conspicuous place in the office of the Registrar, and mailing a copy thereof prepaid to the address of such attorney or solicitor in sufficient time to reach him in due course of mail before the time required for service.

RULE 16.

"The Agent's Book."—There shall be kept in the office of the Registrar of this Court a book to be called "The Agent's Book," in which all advocates, solicitors, attorneys and proctors practising in the said Supreme Court may enter the name of an agent (such agent being himself a person entitled to practice in the said Court) at the said City of Ottawa, or elect a domicile at the said city.

RULE 17.

Suggestion by Respondent who appears in person.—In case any respondent who may have been represented by attorney or solicitor in the Court below, shall desire to appear in person in the appeal, he shall immedi-

ately after the allowance by the Court appealed from or a Judge thereof of the security required by the Act, file with the Registrar a suggestion in the form following :

"A. v. B.

"I, A. B., intend to appear in person in this appeal.
(Signed), A. B."

RULE 18.

If no suggestion filed.—If no such suggestion shall be filed, and until an order shall have been obtained as herein-after provided for a change of solicitor or attorney, the solicitor or attorney who appeared for any party respondent in the Court below shall be deemed to be his solicitor or attorney in the appeal to this Court.

RULE 19.

Suggestion by Respondent who elects to appear by attorney.—When a respondent has appeared in person in the Court below he may elect to appear by attorney or solicitor in the appeal, in which case the attorney or solicitor shall file a suggestion to that effect in the office of the Registrar, and thereafter the notice of hearing and all other papers are to be served on such attorney or solicitor as hereinbefore provided.

RULE 20.

Election of domicile by respondent who appears in person.—A respondent who appears in person may, by a suggestion filed in the Registrar's office, elect some domicile or place at the City of Ottawa, at which all notices and papers may be served upon him, in which case service at such place of the notice of hearing and all other notices and papers shall be deemed good service on the respondent.

RULE 21.

Service when respondent appears in person without electing domicile.—In case the respondent

shall have appeared in person in the Court appealed from, or shall have filed a suggestion pursuant to Rule 17, shall not, before service, have elected a domicile at the City of Ottawa, the notice of hearing may be served by affixing the same in some conspicuous place in the office of the Registrar.

RULE 22.

Changing Attorney or Solicitor.—Any party to an appeal may on an *ex parte* application to a Judge obtain an order to change his attorney or solicitor, and after service of such order on the opposite party, all services of notices and other papers are to be made on the new attorney or solicitor.

FACTUMS.

RULE 23.

Factums to be deposited with Registrar.—At least one month before the first day of the session at which the appeal is to be heard the parties appellant and respondent shall each deposit with the Registrar, for the use of the Court and its officers twenty-five copies of his factum or points for argument in appeal.

RULE 24.

What to contain.—The factum or points for argument in appeal shall contain a concise statement of the facts, and of the points of law intended to be relied on, and of the arguments and authorities to be urged and cited at the hearing arranged under the appropriate heads.

RULE 25.

How to be printed.—The factum or points for argument in appeal shall be printed in the same form and manner as hereinbefore provided for with regard to the case in appeal, and shall not be received by the Registrar unless the requirements hereinbefore contained, as regards the case, are all complied with.

RULE 26.

Motion by respondent to dismiss appeal on ground of delay in filing factum.—If the appellant does not deposit his factum or points for argument in appeal within the time limited by Order 23, the respondent shall be at liberty to move to dismiss the appeal on the ground of undue delay, as provided for by section 41 of the Act.

RULE 27.

Appellant may inscribe *ex parte* if factum not filed.—If the respondent fails to deposit his factum or points for argument in appeal within the said prescribed period, the appellant may set down or inscribe the cause for hearing *ex parte*. (See Rule 31).

RULE 28.

Setting aside inscription *ex parte*.—Such setting down or inscription *ex parte* may be set aside or discharged upon an application to a Judge in Chambers sufficiently supported by affidavits.

RULE 29.

Registrar to seal up factums first deposited.—The factum or points for argument in appeal first deposited with the Registrar shall be kept by him under seal, and shall in no case be communicated to the opposite party until the latter shall himself bring in and deposit his own factum or points.

RULE 30.

Interchange of factums.—So soon as both parties shall have deposited their said factum or points in argument in appeal, each party shall, at the request of the other, deliver to him three copies of his said factum or points.

INSCRIPTION OF APPEAL.

RULE 31.

Registrar to inscribe appeals for hearing.—Appeals shall be set down or inscribed for hearing in a book to be kept for that purpose by the Registrar at least one month before the first day of the session of the Court fixed for the hearing of the appeal.

The appeal cannot be inscribed for hearing until the *factums* of both parties be deposited, or until the respondent be in default in depositing his *factums*, in which case the appellant may inscribe *ex parte*.

The appellant should file a *præcipe* with the Registrar requiring him to inscribe the appeal for hearing. The Registrar would not inscribe the cause without being requested to do so.

HEARING.

RULE 32.

Counsel at hearing.—No more than two counsel on each side shall be heard on any appeal, and but one counsel shall be heard in reply.

RULE 33.

Postponement of hearing.—The Court may in its discretion postpone the hearing until any future day during the same session, or at any following session.

RULE 34.

Default by parties in attending hearing.—Appeals shall be heard in the order in which they have been set down, and if either party neglect to appear at the proper day to support or resist the appeal, the Court may hear the other party, and may give judgment without the intervention of the party so neglecting to appear, or may postpone the hearing upon such terms as to payment of costs or otherwise as the Court shall direct.

RULE 35.

How orders to be signed and dated.—All orders

of this Court in cases of appeal shall bear date on the day of the judgment or decision being pronounced, and shall be signed by the Registrar.

ADDING PARTIES TO THE APPEAL.

RULE 36.

Adding parties by suggestion.—In any case not already provided for by the Act, in which it becomes essential to make an additional party to the appeal, either as appellant or respondent, and whether such proceeding becomes necessary in consequence of the death or insolvency of any original party, or from any other cause, such additional party may be added to the appeal by filing a suggestion as nearly as may be in the form provided for by section 43 of the Act.

RULE 37.

Suggestion may be set aside.—The suggestion referred to in the next preceding rule may be set aside, on motion, by the Court or a Judge thereof.

RULE 38.

Determining questions of fact arising on motion.—Upon any such motion, the Court or a Judge thereof may, in their or his discretion, direct evidence to be taken before a proper officer for that purpose, or may direct that the parties shall proceed in the proper Court for that purpose to have any question tried and determined, and in such case all proceedings in appeal may be stayed until after the trial and determination of the said question.

MOTIONS.

RULE 39.

Motions.—All interlocutory applications in appeals shall be made by motion, supported by affidavit to be filed in the office of the Registrar before the notice of motion is served. The notice of motion shall be served at least four clear days before the time of hearing.

RULE 40.

Notice of motion, how served.—Such notice of motion may be served upon the solicitor or attorney of the opposite party by delivering a copy thereof to the booked agent, or at the elected domicile of such solicitor or attorney, to whom it is addressed, at the City of Ottawa. If the solicitor or attorney has no booked agent, or has elected no domicile at the City of Ottawa, or if a party to be served with notice of motion has not elected a domicile at the City of Ottawa, such notice may be served by affixing a copy thereof in some conspicuous place in the office of the Registrar of this Court.

RULE 41.

Affidavits in support of motion.—Service of a notice of motion shall be accompanied with copies of affidavits filed in support of the motion.

RULE 42.

Giving further time.—Upon application supported by affidavit, and after notice to the opposite party, the Court or a Judge thereof may give further reasonable time for filing the printed case, depositing the printed factum or points of either party, and setting down or inscribing the appeal for hearing, as required by the foregoing rules.

RULE 43.

Setting down motions.—Motions to be made before the Court are to be set down in a list or paper, and are to be called on each morning of the session before the hearing of appeals is proceeded with.

RULE 44.

Appeal Abandoned by Delay.—Unless the appeal is brought on for hearing by the appellant within one year next after the security shall have been allowed, it shall be held to have been abandoned without any

order to dismiss being required, unless the Court or a Judge thereof shall otherwise order.

RULE 45.

Rules applicable to exchequer appeals.—The foregoing rules shall be applicable to appeals from the Exchequer Court of Canada, except in so far as the Act has otherwise provided.

RULES NOT APPLICABLE TO CRIMINAL APPEALS, NOR HABEAS CORPUS.

RULE 46.

Rules not applicable to Criminal Appeals nor Habeas Corpus.—The foregoing rules shall not, except as herein before provided, apply to criminal appeals nor to appeals in matters of *habeas corpus*.

RULE 47.

Case in criminal appeals and habeas corpus.—In the cases mentioned in the next preceding rule, no printed case shall be required, and no factum or points for argument in appeal need be deposited with the Registrar, but such appeals may be heard on a written case, certified under the seal of the Court appealed from, and which case shall contain all judgments and opinions pronounced in the Court below.

RULE 48.

When case to be filed.—In criminal appeals, and in appeals in cases of *habeas corpus*, and unless the Court or a Judge shall otherwise order, the case must be filed as follows :

- (1). In appeals from any of the Provinces other than British Columbia, at least one month before the first day of the session at which it is set down to be heard.
- (2). In appeals from British Columbia, at least two months before the said day.

RULE 49.

Notice of hearing in Criminal Appeals and in appeals in matters of Habeas Corpus.—In cases of criminal appeals and appeals in matters of *habeas corpus*, notice of hearing shall be served the respective times hereinafter fixed before the first day of the general or special session at which the same is appointed to be heard, that is to say :

- (1). In appeals from Ontario and Quebec, two weeks.
- (2). In appeals from Nova Scotia, New Brunswick and Prince Edward Island, three weeks.
- (3). In appeals from Manitoba, one month.
- (4). In appeals from British Columbia, six weeks.

ELECTION APPEALS.**RULE 50.**

Preceding rules not applicable in Election Cases.—The foregoing rules are not to apply to appeals in controverted election cases.

RULE 51.

Printing Record in Election Appeals.—In such election appeals the party appellant shall deposit with the Registrar such sum as shall be required for printing the record or so much thereof as a Judge may direct to be printed at the rate of thirty cents per folio of one hundred words.

RULE 52.

Copies of Record.—The Registrar shall cause twenty-five copies of the said record to be printed in the same form as hereinbefore provided for the case in ordinary appeals for the use of the Court and its officers, and also twenty additional copies, ten of which are, upon his request, to be delivered to the Appellant free of charge, and ten to the Respondent upon payment of thirty cents for every folio of one hundred words in the record so printed.

Amended by Order of the 8th January, 1877.

RULE 53.

Factum in Election Appeals.—The *factum* or points for argument in appeal in Controverted Election appeals shall be printed as hereinbefore provided in the case of ordinary appeals.

RULE 54.

When to be deposited.—The points for argument in appeal or *factum* in Controverted Election cases shall be deposited with the Registrar at least three days before the first day of the session fixed for the hearing of the appeal, and are to be interchanged by the parties in manner hereinbefore provided with regard to the *factum* or points in ordinary appeals.

RULE 55.

Order dispensing with printing of record or factum in election appeals.—In election appeals a Judge in chambers may, upon the application of the Appellant make an order dispensing with the printing of the whole or any part of the record, and may also dispense with the delivery of any *factum* or points for argument in appeal. Such order may be obtained *ex parte*, and the party obtaining it shall forthwith cause it to be served upon the adverse party.

RULE 56.

Fees to be Paid Registrar.—The fees mentioned in Schedule C to these orders shall be paid to the Registrar by stamps to be prepared for that purpose.

RULE 57.

Costs.—Costs in appeal between party and party shall be taxed pursuant to the tariff of fees contained in Schedule D to these Orders.

RULE 58.

Court or Judge may order payment of fixed sum for costs.—The Court or a Judge may direct a fixed sum for costs to be paid in lieu of directing the payment of costs to be taxed.

RULE 59.

How payment of costs may be enforced.—The payment of costs, if so ordered, may be enforced by process of execution in the same manner and by means of the same writs and according to the same practice as may be in use from time to time in the Exchequer Court of Canada.

RULE 60.

Contempts, how punished.—Contempts incurred by reason of non-compliance with any order of the Court other than order for payment of money may be punished in the same manner and by means of the same process and writs and according to the same practice as may be in use from time to time in the Exchequer Court of Canada.

CROSS APPEALS.**RULE 61.**

Cross Appeals.—It shall not under any circumstances be necessary for a Respondent to give notice of motion by way of cross appeal, but if a Respondent intends upon the hearing of an appeal to contend that the decision of the Court below should be varied, he shall, within the time specified in the next rule, or such time as may be prescribed by the special order of a Judge, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not in any way interfere with the power of the Court on the hearing of an appeal to treat the whole case as open, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs.

RULE 62.

Notice to be given.—Subject to any special order which may be made, notice by a Respondent under the last preceding rule shall be one month's notice.

RULE 63.

Factum in cross appeals.—A Respondent who gives a notice, pursuant to the two last preceding rules shall, before or within two days after he has served such notice, deposit a printed *factum* or points for argument in appeal with the Registrar as hereinbefore provided as regards the principal appeal, and the parties upon whom such notice has been served, shall within two weeks after service thereof upon them, deposit their printed *factum* or points with the Registrar, and such *factum* or points shall be interchanged between the parties as hereinbefore provided as to the principal appeal.

TRANSLATIONS.**RULE 64.**

Translation of factum.—Any Judge may require that the *factum* or points for argument in appeal of any party shall be translated into the language with which such Judge is most familiar, and in that case the Judge shall direct the Registrar to cause the same to be translated, and shall fix the number of copies of the translation to be printed, and the time within which the same shall be deposited with the Registrar, and the party depositing such *factum* shall thereupon cause the same forthwith to be printed at his own expense and such party shall not be deemed to have deposited his *factum* until the required number of the printed copies of the translation shall have been deposited with the Registrar.

RULE 65.

Translations of judgments and opinion of Judges of Court below.—Any Judge may also require the Registrar to cause the judgments and opinions of the Judges in the Court below to be translated, and in that case

the Judge shall fix the number of copies of the translation to be printed and the time within which they shall be deposited with the Registrar, and such translation shall thereupon be printed at the expense of the Appellant.

RULE 66.

Payment of Money into Court.—Any party directed by an order of the Court or a Judge to pay money into Court must apply at the office of the Registrar for a direction so to do, which direction must be taken to the Ottawa Branch or Agency of the Bank of Montreal, and the money there paid to the credit of the cause or matter, and after payment the receipt obtained from the bank must be filed at the Registrar's office.

RULE 67.

Payment of Money out of Court.—If money is to be paid out of Court, an order of the Court or a Judge must be obtained for that purpose, upon notice to the opposite party.

RULE 68.

How made.—Money ordered to be paid out of Court is to be so paid upon the cheque of the Registrar, countersigned by a Judge.

RULE 69.

Formal Objections.—No proceeding in the said Court shall be defeated by any formal objection.

RULE 70.

Extending or Abridging Time.—In any appeal or other proceeding the Court or a Judge may enlarge or abridge the time for doing any act, or taking

any proceeding, upon such (if any) terms as the justice of the case may require.

RULE 71.

Registrar to keep necessary Books.—The Registrar is to keep in his office all appropriate books for recording the proceedings in all suits and matters in the said Supreme Court.

RULE 72.

Computation of Time.—In all cases in which any particular number of days not expressed to be clear days, is prescribed by the foregoing rules, the same shall be reckoned exclusively of the first day and inclusively of the last day, unless such last day shall happen to fall on a Sunday, or a day appointed by the Governor-General for a public fast or thanksgiving, or any other legal holiday or non-juridical day, as provided by the Statutes of the Dominion of Canada.

RULE 73.

Adjournment if no Quorum.—If it happens at any time that the number of Judges necessary to constitute a quorum for the transaction of the business to be brought before the Court is not present, the Judge or Judges then present may adjourn the sittings of the Court to the next or some other day and so on from day to day until a quorum shall be present.

VACATIONS.

RULE 74.

Christmas Vacation. -There shall be a vacation at Christmas commencing on the 15th of December and ending on the 10th of January.

RULE 75.

Long vacation.—The long vacation shall comprise the months of July and August.

The time for doing any act under the Rules (such as filing the case under Rule 5) would not be extended by Rules 74 or 75, it not being provided that the time of vacation shall not be computed.

RULL 76.

Interpretation.—In the preceding rules the term “a Judge” means any Judge of the said Supreme Court transacting business out of Court.

RULE 77.

Interpretation.—In the preceeding rules the following words have the several meaning hereby assigned to them over and above their several ordinary meanings, unless there be something in the subject or context repugnant to such construction that is to say :

- (1). Words importing the singular number include the plural number, and words importing the plural number include the singular number.
- (2). Words importing the masculine gender include females.
- (3). The word “party” or “parties” includes a body politic or corporate, and also Her Majesty the Queen and Her Majesty’s Attorney-General.
- (4). The word “affidavit” includes affirmation.
- (5). The words “The Act” mean “*The Supreme and Exchequer Court Act.*”

Dated this seventh day of February, A.D. 1876.

(Signed),

“
“
“
“
“

WM. B. RICHARDS, C. J.
W. J. RITCHIE, J.
S. H. STRONG, J.
T. FOURNIER, J.
W. A. HENRY, J.

SCHEDULE A.

Dominion of }
Canada. }

The Supreme Court will hold a special session at the City of Ottawa on.....the.....day of....., 18....., for the purpose of hearing causes and disposing of such other business as may be brought before the Court (or for the purpose of hearing election appeals, criminal appeals, or appeals in cases of *habeas corpus*, or for the purpose of giving judgments only, as the case may be).

By order of the Chief Justice, or by order of Mr. Justice
.....

(Signed), R. C.,
Registrar.

Dated this.....day of....., 187....

SCHEDULE B.

FORM OF NOTICE OF HEARING APPEAL.

In the Supreme Court }
of Canada. }

J. A., appellant, v. A. B., respondent. Take notice that this appeal will be heard at the next session of the Court, to be held at the City of Ottawa on....., the.....day of....., 187....

To....., appellant's solicitor or attorney, or appellant in person.

Dated this.....day of....., 187....

SCHEDULE C.

TARIFF OF FEES TO BE PAID TO THE REGISTRAR OF
THE SUPREME COURT OF CANADA.

On entering every appeal.....	\$10 00
On entering every judgment, decree or order in the nature of a final judgment.....	10 00
On entering every other judgment, decree or order..	2 00

In other matters the fees shall be regulated by the tariff in force in the Exchequer Court of Canada in actions of the first-class, and in any case not thereby provided for, the fees to be paid shall be in the discretion of the Registrar, subject to revision by the Court or a Judge.

SCHEDULE D.

Referred to in Rule 57 of the Supreme Court of Canada.

TARIFF OF FEES

To be taxed between party and party in the Supreme Court of Canada :

On special case required by section 29 of the Act when prepared and agreed upon by the parties to the cause, including attendance on the Judge to settle the same, if necessary, to each party.	\$ 25 00
Notice of appeal.....	4 00
On consent to appeal directly to the Supreme Court from the Court of original jurisdiction..	3 00
Notice of giving security	2 00
Attendance on giving security.....	3 00
On motion to quash proceedings under section 37 according to the discretion of the Registrar to	25 00
Subject to be increased by order of the Court or of a Judge.....	0 00
On <i>factums</i> in the discretion of the Registrar to...	50 00
Subject to be increased by order of the Court or a Judge	0 00
Printed case per folio of 100 words including correcting, superintending printing and all attendances.....	30
On dismissal of appeal if case be not proceeded with, in the discretion of the Registrar to....	25 00
Subject to be increased by order of the Court or a Judge.....	0 00
Suggestions under sections 42, 43, 44, including copy and service.....	2 50
Notice of intention to continue proceedings under section 45.....	4 00

On depositing money under section 48 in controverted election cases.....	\$ 2 50
Notice of appeal in election cases limiting the appeal to special and defined questions under section 48.....	6 00
Allowance to cover all fees to attorney and counsel for the hearing of the appeal, in the discretion of the Registrar to.....	200 00
Subject to be increased by order of the Court or a Judge.....	0 00
On printing <i>factums</i> , the same fees as in printing the case.	
Besides the Registrar's fees, reasonable charges for postages and disbursements necessarily incurred in proceedings in appeal will be taxed by the taxing officer.	

(Signed),	WM. B. RICHARDS, C. J.
"	W. J. RITCHIE, J.
"	S. H. STRONG, J.
"	T. FOURNIER, J.
"	W. A. HENRY, J.

SUPREME COURT.

GENERAL RULE.

[Monday, the 8th day of January A.D. 1877.]

It is ordered that the words "*thirty cents for each folio of one hundred words in the record so printed*" in the General Rule No. 52 of the 7th of February 1876 be struck out and cancelled, and that in substitution therefor there be read the following words "*his due proportion of the costs of printing the same such proportion to be fixed by the Registrar and the amount so paid shall be returned by the Registrar to the Appellant.*"

(Signed),	WM. B. RICHARDS, C. J.
"	WM. J. RITCHIE, J.
"	S. H. STRONG, J.
"	J. T. TASCHEREAU, J.
"	T. FOURNIER, J.
"	W. A. HENRY, J.

SUPREME COURT OF CANADA.

GENERAL RULE NO. 79.

It is ordered, that during the absence from the City of Ottawa, of Robert Cassels, Jr., Esq., the Registrar of this Court, or until further order, the functions and duties of the said Registrar, including the taxation of costs, be performed by George Duval, Esq., the Précis Writer of this Court.

Dated Ottawa, 10th September, 1877.

(Signed) WM. B. RICHARDS, C.J. WM. J. RITCHIE, J.
 " S. H. STRONG, J. J. T. TASCHEREAU, J.
 " T. FOURNIER, J.

THE SUPREME COURT OF CANADA.

GENERAL RULE 80.

[Wednesday, the 16th day of May, A.D. 1881.]

It is ordered,

1. That Rule *eleven* be and the same is hereby amended by striking out the word "*immediately*" at the beginning of such Rule.

2. That Rule *fourteen* be and the same is hereby amended by striking out the words "*one month*" therein contained, and by inserting in lieu thereof the words "*fifteen days*."

3. That Rule *fifteen* be and the same is hereby amended by inserting after the words "*and mailing*," where they occur in such Rule, the words "*on the same day*," and by striking out the words "*in sufficient time to reach him in due course of mail before the time required for service*."

4. That Rule *twenty-three* be and the same is hereby amended by striking out the words "*one month*" at the beginning of said Rule, and by inserting in lieu thereof the words "*fifteen days*."

5. That Rule *thirty-one* be and the same is hereby amended by striking out the words "*one month*," where they occur in said Rule, and by inserting in lieu thereof the words "*fourteen days*"; and by adding at the end of said Rule the words "*but no Appeal shall be so inscribed which shall not have been filed twenty clear days before said first day of said session, without the leave of the Court or a Judge*."

6. That Rule *sixty-two* be and the same is hereby amended by striking out the words "*one month's*" and by inserting in lieu thereof the words "*fifteen days*."

7. That Rule *sixty-three* be and the same is hereby amended by striking out the words "*two weeks*" where they occur in said Rule, and by inserting in lieu thereof the words "*one week*."

(Signed) W. J. RITCHIE, C.J. S. H. STRONG, J.
 " T. FOURNIER, J. W. A. HENRY, J.
 " JOHN W. GWYNNE, J.

THE SUPREME COURT OF CANADA.

GENERAL RULE 81.

It is hereby ordered, that Schedule D annexed to the Rules of the Supreme Court of Canada be amended as follows:—

Instead of the item: "Printed case, per folio of 100 words, including correcting, superintending printing and all necessary attendances, 30 cts.," the following allowances shall be taxed by the Registrar:—

"For engrossing for printer, copy of case as settled, when such engrossed copy is necessarily and properly required, per folio of 100 words, 10 cts.

"For correcting and superintending printing, per 100 words, 5 cts."

Ottawa, 3rd June, 1882.

(Signed) W. J. RITCHIE, C.J. S. H. STRONG, J.
 " T. FOURNIER, J. W. A. HENRY, J.
 " H. E. TASCHEREAU, J. JOHN W. GWYNNE, J.

THE SUPREME COURT OF CANADA.

GENERAL RULE 82.

It is hereby ordered, that an allowance shall be taxed by the Registrar to the duly entered agent in any appeal, in the discretion of the Registrar, to \$20.

Ottawa, 3rd June, 1882.

(Signed) W. J. RITCHIE, C.J. T. FOURNIER, J.
 " W. A. HENRY, J. H. E. TASCHEREAU, J.
 " JOHN W. GWYNNE, J.

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EXCHEQUER COURT RULES.

NOTE.

Below each Rule reference is made to the English Rule or Rule of the Courts in Ontario from which the Rule in the text is taken or upon which it is substantially based. For the purpose of these references, the following abbreviations are used :

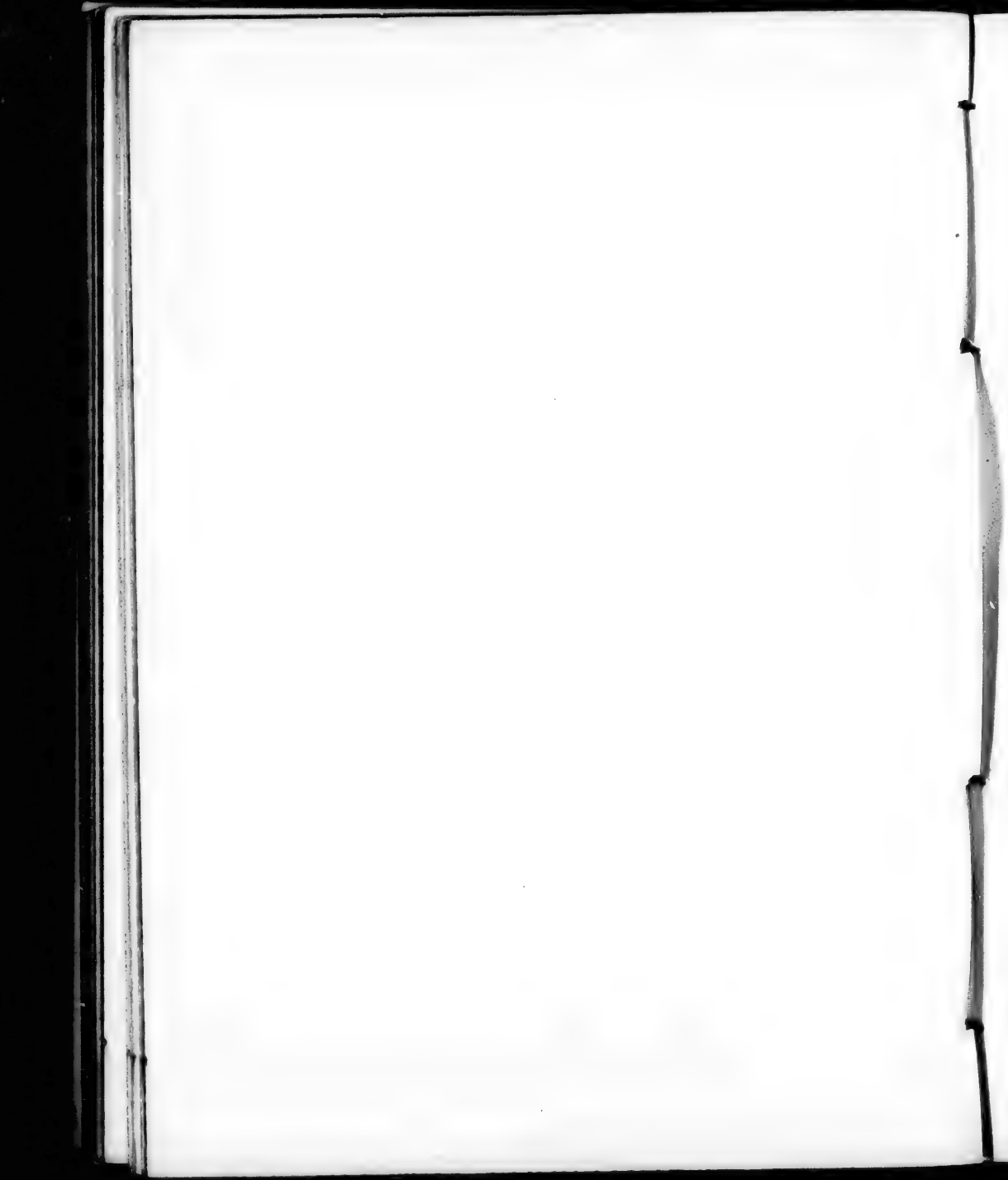
E. O.—(English Order)—Refers to the Orders made in pursuance of the Supreme Court of Judicature Act, 1875, to regulate the practice of the High Court of Justice in England. These Orders will be found in any of the numerous editions of the Judicature Acts recently published in England, and with a copy of one of which editions the practitioner in the Exchequer Court of Canada should provide himself.

The words "Rules regulating procedure in suits by English Information" refer to the Rules of Court issued by the Barons of the Exchequer in Easter Term, 1866, in pursuance of "The Crown Suits, &c., Act, 1865." These Rules are to be found in L. R. 1 Exchequer, page 389.

Taylor's C. Chy. O.—Refers to Taylor's Consolidated Chancery Orders, being the Orders regulating the practice of the Court of Chancery of Ontario.

Gen. Rules (Ont.) Tr. T., 1856—Refers to the General Rules of Court made in Trinity Term, 1856, for regulating the practice of the Courts of Queen's Bench and Common Pleas of Ontario. These Rules are to be found in Harrison's Common Law Procedure Acts

The Rules with an asterisk (*) are applicable to causes in which the cause of action has arisen in the Province of Quebec. (See Rule 261).*



RULES AND ORDERS

OF

THE EXCHEQUER COURT OF CANADA.

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259. and 260. Interpretation.
261. Rules applicable to Province of Quebec.

In pursuance of the provisions contained in the 79th section of the 38th Victoria, chapter 11, intituled: "An Act to establish a Supreme Court and a Court of Exchequer for the Dominion of Canada," and also of provisions contained in the Act 38th Victoria, chapter 12, intituled: "An Act to provide for the institution of suits against the Crown by petition of right, and respecting procedure in Crown suits," it is ordered that the following Rules, in respect of the matters

hereafter mentioned, shall be in force in the Exchequer Court of Canada.

REVENUE CAUSES.

RULE 1. *

Mode of Procedure in Revenue causes arising in any Province except Province of Quebec.—In the several classes of cases mentioned in Section 58 of the said Act, hereafter in these Rules styled "Revenue Causes," where the cause of action or suit shall arise in any of the Provinces other than the Province of Quebec, whether the same be instituted by or on behalf of the Crown, or against the Crown, or any officer thereof, and whether the same be in the nature of a suit in equity or of an action at law, the process, practice, evidence, times for taking proceedings, forms and modes of procedure shall conform, as near as may be, to the process, practice, evidence, times, forms and modes of procedure in use in like causes in the Exchequer Division of Her Majesty's High Court of Justice in England, except in so far as it may be otherwise provided by the said Act, or by these Rules.

RULE 2. *

In causes arising in Province of Quebec.—In all causes in the said Exchequer Court including non-Revenue causes as well as Revenue causes, where the cause of action or suit shall arise in the Province of Quebec, the process, practice, pleadings, evidence, and forms and modes of procedure shall conform, as near as may be, to those in use in like causes in Her Majesty's Superior Court for the Province of Quebec, except in so far as it may be otherwise provided by the said Act, or by these Rules.

RULE 3. *

Rules next following not to apply to certain suits.—The following rules are not to apply to suits in which the cause of action arises in the Province of Quebec, except when expressly so provided.

INFORMATIONS IN SUITS BY THE CROWN AND PETITIONS
OF RIGHT.

RULE 4. *

Suits on behalf of the Crown to be by Information.—All suits on behalf of the Crown in the interest of the Dominion of Canada, which according to the practice of the Exchequer Division of Her Majesty's High Court of Justice in England would be instituted by information, are to be instituted by information filed in the name of the Attorney-General of the Dominion.

RULE 5. *

By whom information to be signed.—Every information is to be signed by the Attorney-General of the Dominion, or by some person duly authorized to affix the signature of the said Attorney-General thereto.

RULE 6.

Form of information.—The information is to conclude with a claim for the relief sought, and the commencement and conclusion thereof may be in the form given in Schedule A to these orders.

RULE 7.

How suits other than by information and Petition of Right to be instituted.—Suits in the said Court other than suits by the Attorney-General or by the Crown and Petitions of Right are to be instituted by filing a statement of claim which may be according to the form given in Schedule B to these orders, and which shall conform to the Rules of pleading hereinafter prescribed, and to the system and mode of pleading now in use in Her Majesty's High Court of Justice in England.

RULE 8.

Petition of Right to be signed by Counsel.—

Every Petition of Right is to be signed by Counsel for the Petitioner, as provided for by the statute applicable thereto.

PRINTING PLEADINGS.

RULE 9. *

What Pleadings to be Written and what Printed.—Every pleading which shall contain less than three folios of one hundred words each (every figure being counted as one word) may be either printed or written, or partly printed and partly written, and every other pleading shall be printed.

E. O. xix. R. 5.

RULE 10. *

How to be printed.—Pleadings and other proceedings required to be printed, shall be printed on paper of good quality, in small pica type leaded, with an inner margin about three-quarters of an inch wide, and an outer margin about two and a half inches wide.

Rules regulating procedure in suits by English information.

RULE 11. *

Written copies may be filed in case of urgency.—In any case which may appear to the Registrar to be one of urgency he may permit a written copy of a pleading to be filed, upon the party so filing the same giving a written undertaking to file a printed copy within *five days* thereafter.

RULE 12. *

Printed copy to be furnished opposite party.—The party printing any pleading or other proceeding shall, on demand in writing, furnish to any other party, his Attorney or Solicitor, any number of printed copies, not exceeding ten, upon payment therefor at the rate of five cents per folio for one copy, and three cents per folio for every other copy.

SERVICE OF INFORMATION, STATEMENT OF CLAIM OR PETITION.

RULE 13. *

Petitions of Right, how to be served.—Petitions of Right are to be left at the office of Her Majesty's Attorney-General, and served as prescribed by the statute in such case made and provided.

RULE 14.

Office copy of information or statement of claim to be served, and how to be endorsed.—In suits instituted by information or by filing a statement of claim no writ or process to appear, plead or answer shall issue, but an office copy of the information, or statement of claim duly certified by the Registrar, shall be served on the Defendant, with an endorsement thereon in the form or to the effect set forth in Schedule C to these orders appended.

RULE 15.

Service to be personal.—Service upon a defendant of an office copy of the information or statement of claim is to be effected personally, except in the cases hereinafter otherwise provided for; but it shall not be necessary to produce the original information or statement of claim at the time of service.

RULE 16.

Service upon a Corporation.—Service of an Information, Statement of claim or Petition of Right within the jurisdiction of the Court upon a Corporation aggregate is to be effected by personal service of an office copy thereof on the Warden, Reeve, Mayor, or Clerk in case of a Municipal Corporation, or on the President, Manager or other head officer, or the Cashier, Treasurer or Secretary at the head office, or at any branch or agency in the Dominion of Canada, or on any other person discharging the like duties, in the case of any other corporation.

Taylor's C. Chy. O. 91.

RULE 17.

Service upon partners.—When partners are sued in respect of any partnership liability, the information, statement of claim or petition of right may be served either upon any one or more of the partners, or at the principal place (within the jurisdiction) of the business of the partnership upon any person having at the time of service the control or management of the partnership business there; and such service shall be deemed good service upon all the partners composing the firm.

E. O. ix., R. 3.

SUBSTITUTIONAL SERVICE.**RULE 18.**

Substitutional service.—If it be made to appear to the Court or to a Judge, that from any cause prompt personal service cannot be effected, the Court or Judge may make such order for substituted, or other service, as may seem just.

SERVICE ON PARTICULAR DEFENDANTS.**RULE 19.**

On husband and wife.—When husband and wife are both defendants, service on the husband shall be deemed good service on the wife, but the Court or a Judge may order that the wife shall be served with or without service on the husband.

E. O. ix., R. 2.

RULE 20.

On Infant.—When an infant is defendant to an information, statement of claim or petition of right, service on his or her father or guardian or tutor or, if none, then upon the person with whom the infant resides, or under whose care he or she is, shall, unless the Court or a Judge otherwise orders, be deemed good service on the infant;

provided that the Court or a Judge may order that service made or to be made on the infant shall be deemed good service.

E. O. ix., R. 4.

RULE 21.

On Lunatic.—When a lunatic, so found by inquisition, or (in the Province of Quebec) a lunatic or person of unsound mind, or one who, for other causes, has been judicially interdicted, or subjected to judicial advisers, is a defendant to any suit, service of the information petition of right or statement of claim on the committee of the lunatic, the curator of the interdicted person, or any one of the judicial advisers shall be deemed good service.

RULE 22.

On Lunatic not interdicted, &c.—When a person of unsound mind, not so found by inquisition or judicially interdicted, or subjected to judicial advisers, is a defendant to any suit, service of the information, petition of right or statement of claim on the person with whom the person of unsound mind resides, or under whose care he or she is, shall, unless the Court or a Judge otherwise orders, be deemed good service on such defendant.

E. O. ix., R. 5.

SERVICE OUT OF JURISDICTION.

RULE 23.

Service out of jurisdiction.—When a defendant is out of jurisdiction of the Court, then upon application, supported by such evidence as may satisfy the Court, or a Judge in what place or country such defendant is or may probably be found, the Court or a Judge may order that an office copy of the information, petition of right or statement of claim be served on the defendant in such place or country or within such limits as the Court or Judge thinks fit to direct; and the order is in such case to limit a time (depending on the place of service) within which the defendant is to

file his statement in defence plea, answer, exception or demurrer, or otherwise make his defence according to the practice applicable to the particular case, or obtain from the Court or a Judge further time so to do.

Taylor's C. Chy. O. 101.

ADVERTISEMENT IN CASE OF A DEFENDANT NOT
TO BE FOUND.

RULE 24.

Service by advertisement.—In case it appears to the Court or a Judge by sufficient evidence that a defendant cannot be found, after due and diligent search, to be served with an office copy of the information, petition of right or statement of claim the Court or a Judge may order the defendant to file his plea, answer, demurrer, exception, or otherwise make his defence according to the procedure applicable to the case, within a time to be limited in the order, and may direct a copy of the order together with a notice to the effect set forth in Schedule D to these orders appended, to be published in such manner as the Court or Judge thinks fit ; and in case the defendant does not file any plea, answer, demurrer, or exception, or otherwise make his defence within the time limited by such order, the Court or Judge, upon proof that advertisements have been duly published according to the requirements of the order, may direct that the case shall thereafter proceed as though the defendant had filed a plea, answer, or defence traversing and denying the allegations contained in the information, petition of right or statement of claim, and the action shall thereafter proceed accordingly.

Taylor's C. Chy. O. 100.

RULE 25.

Judge may also order copy of information, &c., and order to be mailed.—In any case provided for by the last preceding order, the Court or a Judge may in addition to the advertisement therein mentioned, direct that an office copy of the information, petition of right or statement of claim, and a copy of the order shall be forth-

with mailed, with the postage prepaid, to the address of the defendant, at such place as the Court or a Judge may direct, in which case proof by affidavit, of due compliance with such requirement, shall be produced before any order is made permitting the plaintiff to proceed as provided for by the next preceding order.

NO APPEARANCE TO INFORMATIONS.—PLEADINGS.

RULE 26.

No appearance required, how pleadings to informations, &c., to be filed.—No appearance to any information or statement of claim shall be required; but a defendant who is served with an information or statement of claim shall file his statement in answer, demurrer or other defence to the information or statement of claim conformably to the procedure and mode of pleading hereby provided for as the first step in his defence.

RULE 27.*

Times for filing statement in answer or demurrer.—The defence, statement in answer, or demurrer shall be filed within the times hereinafter respectively limited, or within such further extended time as the Court or a Judge may order, that is to say:

1. If the defendant resides in either of the Provinces of Ontario, Quebec, Nova Scotia, New Brunswick or Prince Edward Island, within *one month* after service.
2. If the Defendant resides in either of the Provinces of Manitoba or British Columbia, within *two months* after service.

FORM OF PLEADING IN PETITIONS OF RIGHT.

RULE 28.

Petition of Right, Pleadings in.—In suits by Petition of Right the pleadings subsequent to the Petition shall be regulated by and conform to the procedure and mode of pleading hereinafter prescribed.

RULE 29.*

Attorney General to file plea, etc., within twenty-eight days.—The Attorney-General is to file his statement in defence, demurrer, or other defence to a Petition of Right within *twenty-eight days* after an office copy of the Petition, with the endorsement thereon required by the statute in that behalf made, shall have been left at his office in the City of Ottawa.

By the Petition of Right Act, 1876, sec. 5, the Attorney-General is to file his statement in defence, demurrer, or other defence, within *four weeks* after service of the office copy.

PLEADING GENERALLY.

RULE 30.

The pleadings in actions in the said Exchequer Court shall conform as nearly as may be to the forms and system now in use in Her Majesty's High Court of Justice in England. Excepting as regards cases the cause of action in which shall have arisen in the Province of Quebec.

RULE 31.

The following rules not to apply to certain cases.—The following rules of pleading shall apply to all cases in the said Court excepting those in which the cause of action shall have arisen in the Province of Quebec.

RULE 32.

All pleadings to be concise statements of material facts but not of evidence.—Every pleading shall contain as concisely as may be a statement of the material facts on which the party pleading relies, but not the evidence by which they are to be proved, such statement being divided into paragraphs, numbered consecutively, and each paragraph containing, as nearly as may be, a separate allegation. Dates, sums, and numbers shall be expressed in figures and not in words. Signature of Counsel shall not be necessary, except as regards informations, petitions of right

and statement of claim. Forms similar to those in Schedule E hereto may be used.

E. O. xix. R. 4,

RULE 33.

A copy of every pleading to be served on opposite party.—Every pleading is to be filed, and a copy thereof is to be served on the opposite party or on his Attorney or Solicitor, if he has one, or left at the office of the Attorney-General as the case may be.

RULE 34.

How pleadings to be dated and entitled.—Every pleading shall on its face be entitled of the day and year on which it is filed, and shall also be entitled in the cause.

RULE 35.

No plea or defence to be pleaded in abatement.—No plea or defence shall be pleaded in abatement.

E. O. xix. R. 13.

RULE 36.

When an allegation of fact in a pleading is to be taken as admitted.—Every allegation of fact in any pleading in an action, not being an information, petition of right or statement of claim, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, person of unsound mind not so found by inquisition, or other person judicially incapacitated.

E. O. xix. R. 17.

RULE 37.

Every party must allege all facts on which he means to rely—and all grounds of defence and reply which might take opposite party by

surprise, or raise new issues.—Each party in any pleading, not being an information, petition of right or statement of claim, must allege all such facts not appearing in the previous pleadings as he means to rely on, and must raise all such grounds of defence or reply, as the case may be, as if not raised on the pleadings would be likely to take the opposite party by surprise, or would raise new issues of fact not arising out of the pleadings.

E. O. xix. R. 18.

RULE 38.

No pleading to be inconsistent with previous pleadings of same party.—No pleading, not being an information, petition of right or statement of claim shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

E. O. xix. R. 19.

RULE 39.

Allegations of fact must not be denied generally.—It shall not be sufficient for a defendant in his defence to deny generally the facts alleged by the information, petition of right or statement of claim, but he must deal specifically with each allegation of fact of which he does not admit the truth.

E. O. xix. R. 20.

RULE 40.

Issue may joined on defence or any pleading subsequent to reply—effect of joinder of issue.—The Attorney-General petitioner or plaintiff by his reply may join issue upon the defence, and each party in his pleading, if any, subsequent to reply, may join issue upon the previous pleading. Such joinder of issue shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined, but it may except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted.

E. O. xix. R. 21.

RULE 41.

Allegations not to be denied evasively.—When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. And when a matter of fact is alleged with divers circumstances, it shall not be sufficient to deny it as alleged along with those circumstances, but a fair and substantial answer must be given.

E. O. xix. R. 22.

RULE 42.

Sufficient to state effect of document.—Whenever the contents of any document are material it shall be sufficient in any pleading to state the effect thereof as briefly as possible without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

E. O. xix. R. 24.

RULE 43.

Sufficient to allege notice as a fact.—Whenever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact unless the form or precise terms of such notice be material.

E. O. xix. R. 26.

RULE 44.

Sufficient to allege contract arising from letters or conversations as a fact—and contracts arising therefrom may be stated in the alternative.—Wherever any contract, or any relations between any persons, does not arise from an express agreement, but is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer

generally to such letters, conversations, or circumstances, without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one, as to be implied from such circumstances, he may state the same in the alternative.

E. O. xix. R. 27.

RULE 45.

Not necessary for party to allege matters of fact which law presumes in his favor.—Neither party need in any pleading allege any matter of fact which the law presumes in his favor, or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied.

E. O. xix. R. 28.

PLEADING MATTERS ARISING PENDING THE ACTION.

RULE 46.

Pleading matters arising pending the action, by defendant before delivering defence or time for its delivery expired.—Any ground of defence which has arisen after action brought, but before the defendant has delivered his statement of defence, and before the time limited for his so doing has expired, may be pleaded by the defendant in his statement of defence, either alone or together with other grounds of defence.

E. O. xx. R. 1.

RULE 47.

After delivery of defence or time for its delivery expired.—Where any ground of defence arises after the defendant has delivered a statement of defence, or after the time limited for his doing so has expired, the defendant may, within *fourteen days* after such ground of defence has arisen, and by leave of the Court or a Judge, deliver a further defence setting forth the same.

E. O. xx. R. 2.

RULE 48.

On confessing defence arising after commencement of action plaintiff may sign judgment for costs.—Whenever any defendant, in his statement of defence, or in any further statement of defence as in the last rule mentioned alleges any ground of defence which has arisen after the commencement of the action, the Attorney-General, petitioner or plaintiff may deliver an admission of such defence, which admission may be in the form in Schedule F hereto, with such variations as circumstances may require, and he may thereupon sign judgment for his costs up to the time of the pleading of such defence unless the Court or a Judge shall either before or after the delivery of such admission, otherwise order.

E. O. xx. R. 3.

STATEMENT IN DEFENCE.

RULE 49.

First pleading to be called—"Statement in defence,"—when to be filed.—The first pleading by a defendant is to be termed the statement in defence, and it shall be filed within the time hereinbefore or by the said Petition of Rights Act prescribed, and a copy of it shall also be served as hereinbefore provided for pleadings generally.

DISCONTINUANCE.

RULE 50.

Discontinuance.—The Attorney-General, petitioner or plaintiff may, at any time before receipt of the defendant's statement of defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing, wholly discontinue his action or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay the defendant's costs of the action, or, if the action be not wholly discontinued, the defendant's costs occasioned by the matter so withdrawn.

Such costs shall be taxed, and such discontinuance to withdrawal, as the case may be, shall not be a defence or any subsequent action. Save as in this Rule otherwise provided, it shall not be competent for the Attorney-General, petitioner or plaintiff to withdraw the Record or discontinue the action without leave of the Court or a Judge, but the Court or a Judge may, before or at or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise as may seem fit, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out. The Court or a Judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence, or any part thereof, without such leave.

REPLY AND SUBSEQUENT PLEADINGS.

RULE 51.

The reply.—The pleading of the Attorney-General, petitioner or plaintiff, in answer to the defence shall be called the reply.

RULE 52.

When to be filed and served.—The Attorney-General, petitioner or plaintiff shall file and serve his reply, if any, within *one month* after the defence or the last of the defences shall have been served unless the time shall be extended by the Court or a Judge.

E. O. xxiv. R. 1.

RULE 53.

No pleading subsequent to reply except joinder, without order of judge.—No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the Court or a Judge, and then upon such terms as the Court or Judge shall think fit.

E. O. xxiv. R. 2.

RULE 54.

Time for delivery of pleadings subsequent to reply.—Subject to the last preceding Rule, every pleading subsequent to reply shall be filed and served within *two weeks* after the service of the previous pleading, unless the time shall be extended by the Court or a Judge.

RULE 55.

Close of pleadings.—As soon as either party has joined issue upon any pleading of the opposite party simply without adding any further or other pleading thereto, the pleadings as between such parties shall be deemed to be closed.

E. O. xxv.

ISSUES.

RULE 56.

Issues.—Where in an action it appears to a Judge that the pleadings do not sufficiently define the issues of fact in dispute between the parties, he may direct the parties to prepare issues, and such issues shall if the parties differ, be settled by the Judge.

E. O. xxvi.

AMENDMENTS.

RULE 57.

Amendment of pleadings.—The Court or a Judge may at any stage of the proceedings allow either party to alter his information, petition of right, statement of claim, defence, or reply, or may order to be struck out or amended any matter in such pleadings or statements respectively which may be impertinent or irrelevant, or which may tend to prejudice, embarrass, or delay the fair trial of the action, and all such amendments shall be made as may be necessary for the purpose of determining the real question or questions in controversy between the parties.

E. O. xxvii. R. I.

RULE 58.

Attorney General or petitioner may amend any time before filing of defence.—The Attorney-General Petitioner or Plaintiff may, without any leave, amend the information, petition of right or statement of claim at any time before the filing of a defence, and also once after defence filed before the expiration of the time limited for reply, and before replying.

E. O. xxvii. R. 2.

RULE 59.

Opposite party may apply to disallow amendment.—Where any party has amended his pleading under the last preceding Rule, the opposite party may with *two weeks* after the delivery to him of the amended pleading, apply to the Court or a Judge to disallow the amendment or any part thereof, and the Court or Judge may, if satisfied that the justice of the case requires it, disallow the same.

E. O. xxvii. R. 4.

RULE 60.

On amendment by one party, other party may apply for leave to plead or amend.—Where any party has amended his pleading under Rule 58 the other party may apply to the Court or a Judge for leave to plead anew or to amend his former pleading within such time and upon such terms as may seem just.

E. O. xxvii. R. 5.

RULE 61.

Further powers of amendment.—In addition to the foregoing powers of amendment, at any time during the progress of any action, suit or other proceeding in the said Exchequer Court, the Court or a Judge may, upon the application of any of the parties, and whether the necessity of the required amendment shall or shall not be occasioned by the error, act, default or neglect of the party applying to

amend, or without any such application, make all such amendments as may seem necessary for the advancement of justice, the prevention and redress of fraud, the determining of the rights and interests of the respective parties and the real question in controversy, and best calculated to secure the giving of judgment according to the very right and justice of the case, and all such amendments shall be made upon such terms, as to payment of costs or otherwise, as to the Court or Judge ordering the same to be made shall seem meet.

RULE 62.

If amendment not made within time limited order for amendment to become void.—If a party who has obtained an order for leave to amend a pleading delivered by him does not amend the same within the time limited for that purpose by the order, or if no time is thereby limited, then within *two weeks* from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such *two weeks*, as the case may be, become *ipso facto* void, unless the time is extended by the Court or a Judge.

E. O. xxvii. R. 7.

RULE 63.

How pleadings may be amended.—A pleading may be amended by written alterations in the pleading which has been filed, and by additions on paper to be interleaved therewith if necessary, unless the amendments require the insertion of more than 100 words in any one case, or are so numerous or of such a nature that the making them in writing would render the pleading difficult or inconvenient to read, in either of which cases the amendment must be made by filing a print as amended.

E. O. xxvii. R. 8.

RULE 64.

Amended pleadings to be marked with date of order under which amendment made.—

Whenever any pleading is amended, such pleading when amended shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz., "Amended.....day of....."

E. O. xxvii. R. 9.

RULE 65.

When amended pleading to be served.—Whenever a pleading is amended, such amended pleading shall be served on the opposite party within the time allowed for amending the same.

E. O. xxvii. R. 10.

DEMURRERS.

RULE 66.

Demurrers.—Any party may demur to any pleading of the opposite party or to any part of a pleading setting up a distinct cause of action, ground of defence, or reply, or as the case may be, on the ground that the facts therein do not show any cause of action, ground of defence, or reply, as the case may be, to which effect can be given by the Court as against the party demurring.

E. O. xxviii. R. 1.

RULE 67.

Form of.—A demurrer shall state specifically whether it is to the whole or to a part, and if so to what part of the pleading of the opposite party. It shall state grounds in law for the demurrer. A demurrer may be in the form in Schedule G hereto. If there is no ground or only a frivolous ground of demurrer stated, the Court or a Judge may set aside such demurrer with costs.

E. O. xxviii. R. 2.

RULE 68.

When to be filed and served.—A demurrer shall

be filed and served in the same manner and within the same time as any other pleading in the same stage of the action.

E. O. xxviii, R. 3.

RULE 69.

Demurrer and defence to be in one pleading.

—A defendant desiring to demur to part of a statement of claim and to put in a defence to the other part shall combine such demurrer and defence in one pleading. And so in every case where a party entitled to put in a further pleading desires to demur to part of the last pleading of the opposite party, he shall combine such demurrer and other pleading.

E. O. xxviii, R. 4.

RULE 70.

Attorney-General may demur and plead without leave.—The Attorney-General may demur and plead to the same pleading or part of a pleading without any leave being requisite to entitle him so to do.

RULE 71.

Leave to plead and demur to be obtained.—

If a party other than the Attorney-General desires to be at liberty to plead as well as to demur to the same matter, he may apply to the Court or a Judge for an order giving him leave to do so, and the Court or Judge, if satisfied that there is reasonable ground for the demurrer, may make an order accordingly, or may reserve leave to him to plead after the demurrer is overruled, or may make such other order and upon such terms as may be just.

E. O. xxviii, R. 5.

RULE 72.

Setting down demurrer for argument.—When a demurrer either to the whole or part of a pleading is filed and served, either party may set down the demurrer for argument immediately, and the party so setting down such

demurrer for argument, shall on the same day give notice thereof to the other party. If the demurrer shall not be set down, and notice thereof given within *ten days* after service, and if the party whose pleading is demurred to does not within such time serve an order for leave to amend, the demurrer shall be held sufficient for the same purposes and with the same results as to costs as if it had been allowed on argument.

E. O. xxviii. R. 6.

RULE 73.

While demurrer pending no pleading to be amended.—While a demurrer to the whole or any part of a pleading is pending such pleading shall not be amended unless by order of the Court or Judge, and no such order shall be made except on payment of the costs of the demurrer.

E. O. xxviii. R. 7.

RULE 74.

When demurrer to whole of petition, information, or statement allowed, costs of action to be paid.—If a demurrer to the whole of an Information, Petition of Right or Statement of Claim be allowed, the Crown, Petitioner or Plaintiff as the case may be, subject to the power of the Court to allow the statement of claim to be amended, shall pay to the demurring defendant the costs of the action, unless the Court shall otherwise order.

E. O. xxviii. R. 9.

RULE 75.

When demurrer to pleading or any part pleading allowed matter demurred to to be deemed struck out of pleadings.—Where a demurrer to any pleading or part of a pleading is allowed in any case not falling within the last preceding Rule, then (subject to the power of the Court to allow an amendment) the matter demurred to shall as between the parties to the de-

murrer be deemed to be struck out of the pleadings, and the rights of the parties shall be the same as if it had not been pleaded.

E. O. xxviii. R. 10.

RULE 76.

Costs when demurrer overruled.—Where a demurrer is overruled the demurring party shall pay to the opposite party the costs occasioned by the demurrer, unless the Court shall otherwise direct.

E. O. xxviii. R. 11.

RULE 77.

When demurrer overruled Court may allow demurring party to plead.—Where a demurrer is overruled the Court may make such order and upon such terms as to the Court shall seem right for allowing the demurring party to raise by pleading any case he may be desirous to set up in opposition to the matter demurred to.

E. O. xxviii. R. 12.

RULE 78.*

Form of setting down demurrer for argument.—A demurrer shall be set down for argument by delivering to the proper officer a præcipe in the Form in Schedule H.

E. O. xxviii. R. 13.

RULE 79.*

Notice of argument of, when to be served.—Notice of argument of a demurrer is to be served at least *eight clear days* before the argument.

DEFAULT OF PLEADING.

RULE 80.

When default in pleading action may be set

down on motion for judgment.—If the Defendant makes default in delivering a defence or demurrer the Attorney-General or Plaintiff may set down the action on motion for judgment, and such judgment shall be given as upon the information, or statement of claim the Court shall consider the Attorney-General or Plaintiff to be entitled to.

E. O. xxix. R. 10.

RULE 81.

When one of several defendants makes default.—Where there are several Defendants, then, if one of such Defendants make such default as aforesaid, the Attorney-General or Plaintiff may either set down the action at once on motion for judgment against the Defendant so making default, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other Defendants.

E. O. xxix. R. 11.

RULE 82.

Default by Attorney-General.—In case the Attorney-General shall make default in filing any pleading in any action or proceeding instituted by Petition of Right within the prescribed time, the Petitioner may apply to the Court or a Judge on motion for an order that the petition be taken as confessed, pursuant to the provision in that behalf contained in the petition of Rights Act, Canada, 1875, or for an order giving him liberty to proceed as if the Attorney-General had filed a statement in answer, traversing or denying the case made by the Petition, and upon either of such orders being made, the case may thenceforth proceed accordingly.

RULE 83.

Default in replying or demurring within time limited, effect of.—If the Attorney-General Petitioner or Plaintiff does not deliver a reply or demurrer, or any party does not deliver any subsequent pleading, or a demurrer, within the period allowed for that purpose, the

pleadings shall be deemed to be closed at the expiration of that period, and the statements of fact in the pleading, last delivered shall be deemed to be admitted.

E. O. xxix. R. 12.

RULE 84.

If no reply or demurrer or subsequent pleading delivered after expiring of one month after period allowed defendant may apply to dismiss action for want of prosecution.—In case the Attorney-General Petitioner of Plaintiff shall not deliver a reply or demurrer or any subsequent pleading or a demurrer within a month after the period allowed for that purpose shall have expired, the Defendant instead of applying for an order for trial, may apply to the Court or a Judge to dismiss the action with costs for want of prosecution, and on the hearing of such application the Court or Judge may order the action to be dismissed accordingly, or may make such other order on such terms as to the Court or Judge shall seem just.

RULE 85.

Judgment by default may be set aside by Court or Judge.—Any party may be relieved against any default under any of these Rules, by the Court or a Judge, upon such terms as to costs or otherwise as such Court or Judge may think fit.

E. O. xxix. R. 14.

DISCOVERY AND INSPECTION.

RULE 86.

Petitioner, plaintiff or defendant may be examined by opposite party.—After the defence is filed any Plaintiff and any Petitioner in a Petition of Right, and any Defendant other than the Crown or the Attorney-General may, at the instance of the opposite party, and without order, be examined for the purposes of discovery before the Registrar or before some other officer of the court specially

appointed for that purpose, or before a Judge, if so ordered by the Court or a Judge.

RULE 87.*

Departmental or other officers of the Crown may be examined.—Any departmental or other officer of the Crown may by order of the Court or a Judge be examined at the instance of the party adverse to the Crown in any action for the same purposes and before the same officers or before the Court or a Judge, if so ordered.

RULE 88.*

Examination in actions against Corporations.—If any party to an action be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons empowered by law to sue or to be sued, either in its own name, or the name of any officer or other person, any member or officer of such corporation, company or body, may at the instance of any adverse party in the action and without order be examined for the purposes of discovery before the same officers in the two next preceding orders mentioned, or before a Judge, if so specially ordered by the Court or a Judge.

RULE 89.*

Subpœna to be issued to enforce attendance.—The attendance of a party, officer or other person, for examination under the three next preceding Rules, may be enforced by writ of subpœna ad testificandum in the same manner as the attendance of witnesses for examination at the trial of an action is to be enforced.

RULE 90.*

Production of documents at examination.—Such parties or officers, or other persons liable to examination, may be compelled to produce books, documents, and papers by a writ of subpœna *duces tecum*.

RULE 91.*

Parties to be examined to be paid.—Parties, officers, or other persons called upon to submit to examination under the preceding rules shall be entitled to be paid the same fees as witnesses subpoenaed to give evidence at the trial of an action.

RULE 92.*

Examination of parties without the jurisdiction by interrogatories.—Any person liable to examination for purposes of discovery under any of the foregoing rules, being without the jurisdiction, may by order of a Judge be called upon to answer upon oath written interrogatories for the like purpose, and within such time as may be fixed by the order of the Judge.

RULE 93.*

Case of party omitting to answer.—If any person examined or interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court or a Judge for an order requiring him to answer, or to answer further, as the case may be, and an order may be made requiring him to answer, or answer further, either by affidavit or *viva voce* examination, as the Judge may direct.

E. O. xxxi. R. 10.

RULE 94.*

Order for production may be made by Court or Judge at any time.—It shall be lawful for the Court or a Judge, at any time during the pendency of any action or proceeding, to order the production by any party thereto, or by any officer of the Crown, upon oath, of such of the documents in his possession or power relating to any matter in question in such action or proceeding, as the Court or Judge shall think right, and the Court may deal with such documents when produced in such manner as shall appear just.

E. O. xxxi. R. 11.

RULE 95.*

Order for discovery of documents may be applied for without filing affidavit.—Any party may, without filing any affidavit, apply to a Judge for an order directing any other party to the action, or any officer of the Crown, to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question in the action.

E. O. xxxi. R. 12. The following form may be used :

IN THE EXCHEQUER COURT OF CANADA.

IN THE MATTER OF THE PETITION OF RIGHT OF

A. B.

Petitioner.

VS.

Her Majesty the Queen,

Defendant.

Upon the application of I do order that within days after service hereof on the Petitioner, his Attorney or Agent, [or as the case may be] the Petitioner [or, as the case may be] do make discovery on oath by affidavit of the documents which are or have been in his possession or power relating to any matter in question in this action, or what he knows as to the custody they or either of them are in, and whether he objects (and if so on what grounds) to the production of such as are in his possession or power.

Dated, &c.

RULE 96.*

Affidavit to be made by party upon whom order made.—The affidavit to be made by a party or officer of the Crown, against whom such order as is mentioned in the last preceding rule has been made, shall specify which, if any, of the documents therein mentioned, he objects to produce, and it may be in the Form in Schedule I hereto, with such variations as circumstances may require.

E. O. xxxi. R. 13.

RULE 97.*

Production of documents for inspection.—Every party to an action or other proceeding shall be

entitled, at any time before or at the hearing thereof, by notice in writing, to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his Attorney, Solicitor or Agent and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such action or proceeding, unless he shall satisfy the Court that such document relates only to his own title, he being a Defendant to the action, or that he had some other sufficient cause for not complying with such notice.

E. O. xxxi. R. 14.

RULE 98.*

Form of notice to produce.—Notice to any party to produce any documents referred to in his pleading or affidavits shall be in the form in Schedule K hereto.

E. O. xxxi. R. 15.

RULE 99.*

Notice when inspection may be made.—The party to whom such notice is given shall, within *two days* from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in Rule 97, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within *four days* from the receipt of such notice, deliver to the party giving the same a notice stating a time within *three days* from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, Attorney or Agent at Ottawa, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice may be in the Form in Schedule L hereto, with such variations as circumstances may require.

E. O. xxxi. R. 16.

RULE 100.*

Order for inspection may be obtained.—If the party served with notice under Rule 97 omits to give such notice of a time for inspection, or objects to give inspection, the party desiring it may apply to a Judge for an order for inspection.

E. O. xxxi. R. 17.

RULE 101.*

Application for to be to a Judge upon affidavit.—Every application for an order for inspection of documents shall be to a Judge. And except in the case of documents referred to in the pleadings or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party or of an officer of the Crown.

E. O. xxxi. R. 18.

RULE 102.*

Judge may order any question or issue to be first determined.—If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court or a Judge may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the action, or that for any other reason it is desirable that any issue or question in dispute in the action should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

E. O. xxxi. R. 19.

RULE 103.*

Consequences of not appearing to reply to

order.—If any party or officer of the Crown fails to comply with any subpoena or order for *viva voce* examination, to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a Plaintiff or Petitioner in a petition of right, be liable to have his action dismissed for want of prosecution, and, if a Defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party examining or interrogating may apply to the Court or a Judge for an order to that effect, and an order may be made accordingly.

E. O. xxxi. R. 20.

RULE 104.*

How service of order for discovery or inspection may be made.—Service of an order for discovery or inspection made against any party on his Attorney, Solicitor, or Agent shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order.

E. O. xxxi. R. 21.

RULE 105.*

If at trial part of any examination read, the whole to be considered in evidence.—If at any trial of an action, or issue, any part of any examination, or any one or more of the answers of the opposite party to interrogatories shall be read the whole of the examination or answers shall be considered as being in evidence.

ADMISSIONS.

RULE 106.

Any party may give notice of admissions.—Any party to an action may give notice, by his own statement or otherwise, that he admits the truth of the whole or

reply to

any part of the case stated or referred to in the statement of claim, defence, or reply of any other party.

E. O. xxxii. R. 1.

RULE 107.

Notice to admit and costs of refusing.—Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the action may be unless at the hearing or trial the Court certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is in the opinion of the taxing officer a saving of expense.

E. O. xxxii. R. 2.

RULE 108.

Form of notice.—A notice to admit documents may be in the Form in Schedule M hereto.

E. O. xxxii. R. 3.

RULE 109.

Affidavit as to admissions.—An affidavit of the solicitor or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents, and annexed to the affidavit, shall be sufficient evidence of such admissions.

E. O. xxxii. R. 4.

INQUIRIES AND ACCOUNTS.

RULE 110.

Inquiries and accounts.—The Court or a Judge may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or

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taken, notwithstanding that it may appear that there is some special or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

E. O. xxxlii.

QUESTIONS OF LAW.

RULE 111.*

Special case may be stated for opinion of Court.—The parties may, after the information, petition of right or statement of claim has been filed, concur in stating the questions of law arising in the action in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby. Upon the argument of such case the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial.

E. O. xxxiv. R. 1.

RULE 112.*

Questions of law may be first tried.—If it appear to the Court or a Judge, either from the statement of claim or defence or reply or otherwise, that there is in any action a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, the Court or Judge may make an order accordingly, and may direct such questions of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court or Judge may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

E. O. xxxiv. R. 2.

RULE 113.*

Special case to be printed.—Every special case shall be printed by the Attorney-General or petitioner, in same form and manner as hereinbefore provided, with the reference to pleadings, and shall be signed by counsel for all parties, and shall be filed by the Attorney-General or petitioner. Printed copies for the use of the Court shall be delivered by the party printing the same at the time of setting down the case for argument.

E. O. xxxiv. R. 3.

RULE 114.*

Special case in actions where married woman, infant or lunatic is party.—No special case in an action to which a married woman, infant or person of unsound mind is a party shall be set down for argument without leave of the Court or a Judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant or person of unsound mind, are true.

E. O. xxxiv. R. 4.

RULE 115.*

Entry of special case for argument.—Either party may enter a special case for argument by delivering to the proper officer a præcipe, in the Form in Schedule N hereto, and also if any married woman, infant, or person of unsound mind be a party to the action, producing a copy of the order giving leave to enter the same for argument.

E. O. xxxiv. R. 5.

ORDER FOR TRIAL AND JURIES.**RULE 116.***

Order for trial.—When any action or suit shall be ripe for trial or hearing, a Judge may, on application of any

party and after summons served on all other parties to the suit, fix the time and place of trial or hearing, and may direct when and in what manner and upon whom notice of trial or hearing together with a copy of the Judge's order is to be served, and such notice and order shall be forthwith served accordingly.

The application to be made in pursuance of the above Rule should be to a Judge at Chambers by way of summons. This Rule is applicable to causes in which the cause of action has arisen in the Province of Quebec as well as to other causes, and as the proceeding by way of summons and order is one not known in the procedure of that Province, it has been thought advisable to give a form both of summons and order granted under this Rule.

SUMMONS TO FIX TRIAL, &c.

IN THE EXCHEQUER COURT OF CANADA.

In the matter of the Petition of Right of

A. B.

Petitioner.

AND

Her Majesty the Queen,

Defendant.

Let the Attorney-General of the Dominion of Canada, his attorney or agent attend on behalf of Her Majesty before the presiding Judge at Chambers in the City of Ottawa, on the day of instant, [or next] at o'clock in the forenoon or 23 soon thereafter as Chambers may be held to show cause why the trial in the matter of the above petition should not be fixed to take place at the City of in the Province of on the day of A.D. 1877, or at such other time and place as to the said Judge may seem best; and why the said Judge should not also direct when and in what manner and upon whom notice of trial or hearing together with a copy of the order to be made by the said Judge is to be served.

Dated at Chambers this day of, A.D. 1876.

ORDER FIXING TRIAL, &c.

(Style of cause as in summons).

Upon reading the summons granted herein, [and the affidavit of service thereof, if any,] and upon hearing counsel for all parties, I do

order that the trial or hearing of this matter do take place before a Judge of this Court, at the Court House in the City of, or at such other place in the said City as the said Judge shall direct, on, the day of, A.D. 1877, at eleven o'clock in the forenoon, or so soon thereafter as the said Judge shall attend; and I do further order that notice of trial at the time and place aforesaid together with a copy of this order be within three days from the date hereof, served on Her Majesty's Attorney-General for the Dominion of Canada by leaving such notice and copy of said order at the office of the said Attorney-General in the City of Ottawa, and also served within the time aforesaid on A. F. M., the Solicitor for the said Attorney-General, by leaving such notice and copy of said order at the office of the said A. F. M. This order to be without prejudice to any application that may be made to the presiding Judge at the trial of this matter by any of the parties hereto to have part of the evidence taken or the matter determined at some place other than that hereinbefore appointed, under the provisions of the Statute in that behalf.

Dated at Chambers this day of A.D. 1876.

RULE 117.*

Venire facias, order for.—If there are in any of the several classes of cases, in the next preceding order mentioned, any issues of fact to be tried by a jury, the Judge shall at the same time and upon the same application order the issue of a writ of *venire facias* pursuant to Sec. 65 of the said Act.

RULE 118.

Trial of issues of facts to be at bar.—All trials of issues of fact in the Exchequer Court shall be deemed to be trials at the bar of the said Court and not at *nisi prius*.

NOTICE OF TRIAL AND TRIAL.

RULE 119.

Countermand of notice of trial.—No notice of trial shall be countermanded except by consent or by leave of the Court or a Judge, which leave may be given subject to such terms as to costs as may be just.

E. O. xxxvi. R. 13.

RULE 120.*

Sheriff may adjourn sittings in absence of Judge.—In case the Judge is unable from any cause to attend on the day fixed for the trial of an issue the Sheriff may adjourn the sitting of the Court from day to day until the Judge attends.

RULE 121.

Default by defendant in appearing at trial.—If, when an action is called on for trial the Attorney-General, plaintiff or petitioner appears, and the defendant does not appear, then the Attorney-General plaintiff or petitioner may prove his claim as far as the burden of proof lies upon him.

E. O. xxxvi. R. 18.

RULE 122.

Default by Attorney-General or petitioner in appearing at trial.—If, when an action is called on for trial, the defendant appears and the Attorney-General, plaintiff or petitioner does not appear, the defendant shall be entitled to judgment dismissing the action.

E. O. xxxvi. R. 19.

RULE 123.

Postponement of trial.—The Judge may, if he thinks it expedient for the interests of justice, postpone or adjourn the trial for such time, and upon such terms, if any, as he shall think fit.

E. O. xxxvi. R. 21.

RULE 124.

Directions by Judge at trial.—Upon the trial of an action the Judge may at, or after such trial, direct that judgment be entered for any or either party, as he is by law entitled to upon the findings, and either with or without

leave to any party to move, to set aside, or vary the same, or to enter any other judgment upon such terms, if any, as he shall think fit to impose, or he may direct judgment not to be entered then, and leave any party to move for judgment. No judgment shall be entered after a trial, without the order of a Judge.

E. O. xxxvi. R. 22.

RULE 125.*

Findings of fact and directions of Judge to be entered by officer of Court.—The officer present at the trial shall enter all such findings of facts as the Judge may direct to be entered, and the directions, if any, of the Judge as to judgment, and the certificates, if any, granted by the Judge, in a book to be kept for the purpose.

E. O. xxxvi. R. 23.

RULE 126.

Where Judge directs judgment to be entered to any party absolutely.—If the Judge shall direct that any judgment be entered for any party absolutely the certificate of the officer to that effect shall be a sufficient authority to the Registrar to enter judgment accordingly.

E. O. xxxvi. R. 24.

RULE 127.

Where Judge directs judgment to be entered subject to leave to move.—If the Judge shall direct that any judgment be entered for the party subject to leave to move judgment shall be entered accordingly upon the production of the officer's certificate.

E. O. xxxvi. R. 25.

RULE 128.

Judge at trial may refer cause.—Where after a trial of issues of fact it appears to the Judge who has tried the issues that there ought to be further enquiry and in-

vestigation as to accounts or like matters not comprised in the issues, and which cannot be conveniently enquired into at a trial before a Judge with or without a jury, the Judge may direct a preliminary judgment to be entered referring the action to a Judge in Chambers or to the Registrar or some other officer of the Court and either directing that final judgment be entered according to the result of the reference, or reserving the case for further consideration after the report for final judgment.

RULE 129.*

Printed copies of pleadings to be furnished for use of Judge.—The party who gives notice of trial shall furnish for the use of the Judge, *four days* before the trial, a printed copy of the pleadings, issues and order for trial.

E. O. xxxvi. R. 17.

RULE 130.*

Copy of Judges notes to be made.—Immediately after the trial of any action or issues by a Judge alone, or by a Judge with a jury, the Registrar shall cause a copy of the Judge's notes of the evidence to be made, and after careful examination of the same he shall cause such copy to be filed with the other papers in the cause.

EVIDENCE.

RULE 131.*

Evidence generally.—In the absence of any agreement between the parties, and subject to the provisions contained in the 63rd Section of the said Act, which requires that issues of fact shall be tried according to the laws of the Province in which the cause originated, including the laws of evidence, and subject also to these rules, the witnesses at the trial of any action shall be examined *voir voce*, and in open Court, but subject to the said provisions of the said Act, the Court, or a Judge, may at any time, for

sufficient reason, order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial on such conditions as the Court or Judge may think reasonable, or that any witness whose attendance in Court ought for some sufficient cause to be dispensed with, be examined *viva voce* or by interrogatories before a Commissioner or other officer of the Court provided that where it appears to the Court or Judge that the other party *bona fide*, desires the production of a witness for cross-examination and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

E. O. xxxvii. R. 1.

RULE 132.*

Evidence by affidavit in certain cases.—Upon any motion, petition or summons, evidence may be given by affidavit, but the Court or a Judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit.

E. O. xxxvii. R. 2.

RULE 133.

What affidavits to contain.—Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions on which statements as to his belief with the grounds thereof may be admitted. The costs of every affidavit, which shall unnecessarily set forth matters of hearsay or argumentative matter or copies or extracts from documents shall be paid by the party filing the same.

E. O. xxxvii. R. 3.

RULE 134.*

Court or Judge may order any person to be examined.—The Court or a Judge may, in a cause where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before any officer

of the Court, or any other person or persons duly authorized to take or administer oaths in the said Court, and at any place, of any witness or person, and may order any deposition so taken to be filed in the Court, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms, if any, as the Court or a Judge may direct.

E. O. xxxvii. R. 4.

RULE 135.*

Deponents may be cross-examined on affidavit.—Any person making an affidavit to be used in any action may be required to appear before the Registrar, or any other person specially appointed for that purpose, to be cross-examined thereon. The attendance of such person may be enforced by Subpoena *ad testificandum*. Any person served with a subpoena for such purpose shall be entitled to the same fees as a witness at trial. *Two clear days'* notice of such cross-examination is to be given by the cross-examining party to the opposite party.

Taylor's C. Chy. O. 268-269.

RULE 136.

How affidavits to be drawn.—Affidavits are invariably to be drawn in the first person, and in numbered paragraphs, and no costs are to be taxed for any affidavits not so drawn.

Gen. Rules (Ont.) T. T. 1856, 112.

RULE 137.

When to be filed.—Affidavits to be used in support of any motion or application are to be filed when the order *nisi* or summons is moved or applied for, or, if the motion is to be made upon notice, before notice of motion is served.

Gen Rules (Ont.) T. T. 1856, 117. Taylor's C. Chy. O. 261.

NEW TRIALS.

RULE 138.

Application for new trial.—A party desirous of obtaining a new trial of any cause in which a verdict has been found by a jury, or by a Judge without a jury, must apply for the same to the Court by motion for an order calling upon the opposite party to show cause at the expiration of *eight days* from the date of the order, or so soon after as the case can be heard, why a new trial should not be directed. Such motion shall be made within *ten days* after the trial, or within such extended time as the Court or a Judge may allow.

E. O. xxxix. R. 1.

RULE 139.

Order for when to be served.—A copy of such order shall be served on the opposite party within *four days* from the time of the same being made.

E. O. xxxix. R. 2.

RULE 140.

Not to be granted on certain grounds.—A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, unless in the opinion of the Court some substantial wrong or miscarriage has been thereby occasioned in the trial of the action; and if it appear to the Court that such wrong or miscarriage affects part only of the matter in controversy, the Court may give final judgment as to part thereof, and direct a new trial as to the other part only.

E. O. xxxix. R. 3.

RULE 141.

New trial may be ordered of any question.—A new trial may be ordered of any question in an action, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question.

E. O. xxxix. R. 4.

RULE 142.

Order to show cause to stay proceedings.—An order to show cause shall be a stay of proceedings in the action, unless the Court shall order that it shall not be so as to the whole or any part of the action.

E. O. xxxix. R. 5.

JUDGMENT.**RULE 143.**

Motion for judgment.—After the pleadings are closed, any party to the cause may apply to the Court or a Judge upon due notice of such application to the opposite party for an order dispensing with trial and permitting the cause to be set down forthwith on motion for judgment with liberty to prove documents and facts by affidavits on the motion for judgment, and the Court or a Judge may grant such application if it appear to them that no seriously controverted question of fact is likely to arise.

RULE 144.

Judgment to be obtained on motion.—Except where by the Act or by these Rules it is provided that judgment may be obtained in any other manner, the judgment of the Court shall be obtained by motion for judgment.

E. O. xl. R. 1.

RULE 145.

Setting down on motion for judgment and giving notice.—Where at the trial of an action the Judge has ordered that any judgment be entered subject to leave to move, the party to whom leave has been reserved shall set down the action on motion for judgment, and give notice thereof to the other parties within the time limited by the Judge in reserving leave, or if no time has been limited within *fourteen days* after the trial, the notice of motion shall state the grounds of the motion and the relief sought, and that the motion is pursuant to leave reserved.

E. O. xl. R. 2.

RULE 146.

Where judgment not directed to be entered at trial, the Attorney-General, plaintiff or petitioner may set down action on motion for judgment, on his default defendant may do so.—Where at the trial of an action, the Judge abstains from directing any judgment to be entered, the Attorney-General, plaintiff or petitioner may set down the action on motion for judgment. If he does not so set it down, and give notice thereof to the other parties within *fourteen days* after the trial, any defendant may set down the action on motion for judgment, and give notice thereof to the other parties.

E. O. xl. R. 3.

RULE 147.

When preliminary judgment entered and reference ordered.—When at the trial of an action, a preliminary judgment has been directed to be entered ordering a reference to a Judge in Chambers, or to the Registrar or some other officer of the Court, any party may set the action down on motion for judgment at any time after the lapse of *fourteen days* from the filing of the report of the Judge, Registrar or other officer, if in the meantime no notice of appeal from the report shall have been given.

RULE 148.

Where in trial before jury Judge has directed judgment to be entered.—Where, at the trial of an action before a jury, the Judge has directed that any judgment be entered, any party may without any leave reserved move to set aside such judgment and enter any other judgment, on the ground that the judgment directed to be entered is wrong by reason of the Judge having caused the finding to be entered wrongly with reference to the finding of the jury upon the question or questions submitted to them.

E. O. xl. R. 4.

RULE 149.

Motion to set aside judgment entered.—Where, at the trial of an action, the Judge has directed that any judgment be entered, any party may without any leave reserved move to set aside such judgment, and to enter any other judgment on the ground that upon the finding as entered the judgment so directed is wrong.

E. O. xl. R. 5.

RULE 150.

How and when motion to be made.—On every motion made under either of the last two preceding Rules, the order shall be an order to show cause and shall be returnable in *eight days*. The motion shall be made within *fourteen days* after the trial or within such extended time as a Court or a Judge may allow.

E. O. xl. R. 6.

RULE 151.

Setting down on motion for judgment where issues or questions of fact ordered to be determined.—Where issues have been ordered to be tried or issues or questions of fact to be determined in any manner, the Attorney-General, plaintiff or the petitioner may set down the action on motion for judgment as soon as such issues or questions have been determined. If he does not so set it down and give notice thereof to the other parties within *fourteen days* after his right to do so has arisen, then after the expiration of such *fourteen days* any defendant may set down the action on motion for judgment and give notice thereof to the other parties.

E. O. xl. R. 7.

RULE 152.

Where some only of such issues have been tried.—Where issues have been ordered to be tried or issues or questions of fact to be determined in any manner,

and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the Court or Judge for leave to set down the action on motion for judgment, without waiting for such trial or determination. And the Court or Judge may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other questions of fact.

E. O. xl. R. 8.

RULE 153.

No action to be set down for motion for judgment after the expiration of one year.—No action shall, except by leave of the Court or a Judge, be set down on motion for judgment after the expiration of *one year* from the time when the party seeking to set down the same first became entitled so to do.

E. O. xl. R. 9.

RULE 154.

Proceedings on motion for judgment.—Upon a motion for judgment, or for a new trial, the Court may, if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made as it may think fit; and so soon as the issues are tried, or the report filed, as the case may be, the motion may be brought on again for further consideration on *ten days'* notice by any party, and any application for a new trial of the issues to alter the entry of the findings of the Judge or Jury, at the trial of the

issues, or vary or refer back the report of the Judge, Registrar, or other officer, or to reverse the findings therein contained, shall come on and be heard at the same time as the further consideration of the motion for judgment: Provided at least *eight days'* notice of such application shall have been given.

E. O. xl. R. 10.

RULE 155.

Order may be applied for on admission of facts.—Any party to an action may at any stage thereof apply to the Court or a Judge for such order as he may, upon any admissions of fact in the pleadings, be entitled to, without waiting for the determination of any other question between the parties. The foregoing Rules shall not apply to such applications, but any such application may be made by motion, so soon as the right of the party applying to the relief claimed has appeared from the pleadings. The Court or a Judge may, on any such application, give such relief, subject to such terms, if any, as such Court or Judge may think fit.

E. O. xl. R. 11.

RULE 156.

Entry of judgment, form of.—Every judgment shall be entered by the proper officer in the book to be kept for the purpose. An office copy of the judgment stamped with the seal of the Court shall be delivered to the party entering the same. The forms of Schedule O may be used with such variations as circumstances may require.

E. O. xli. R. 1.

RULE 157.

When to be dated.—Where any judgment is pronounced by the Court or a Judge in Court, the entry of the judgment shall be dated as of the day on which such judgment is pronounced and the judgment shall take effect from that date.

E. O. xli. R. 2.

RULE 158.

Effect of judgment on non-suit.—Any judgment of non-suit, unless the Court or a Judge otherwise directs shall have the same effect as a judgment upon the merits for the defendant; but, in any case of mistake, surprise or accident, any judgment of non-suit may be set aside on such terms as to payment of costs or otherwise, as to the Court or a Judge shall seem just.

E. O. xli. R. 6.

REFERENCES.

RULE 159.

Proceedings on reference.—Where any cause or matter or any question in any cause or matter is referred to the Registrar or other officer of the Court, he shall, unless otherwise directed by the Court or a Judge, proceed with the hearing of the reference *de die in diem* in a similar manner as in actions tried by a Judge and jury.

E. O. xxxv. R. 30.

RULE 160.

Evidence may be taken upon.—Subject to any order to be made by the Court or Judge ordering the same, evidence shall be taken upon a reference before the Registrar or other officer of the Court, and the attendance of witnesses may be enforced by *subpoena* in the same manner, as nearly as circumstances will admit, as at trials before a Judge.

E. O. xxxv. R. 31.

RULE 161.

Power of Registrar or referee.—Subject to any such order as last aforesaid, the Registrar or other officer of the Court, shall have the same authority in the conduct of any reference as a Judge of the Court, when presiding at any trial before him.

E. O. xxxv. R. 32.

RULE 162.

Registrar or referee not authorised to attach.—Nothing in these rules contained shall authorise the Registrar or any officer of the Court to commit any person to prison, or to enforce any order by attachment or otherwise.

E. O. xxxv. R. 33.

RULE 163.

Registrar or referee may reserve questions for decision of Court.—The Registrar or other officer of the Court may, before the conclusion of any trial before him or by his report under the reference made to him, submit any question arising therein for the decision of the Court, or state any facts specially with power to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement, shall be entered as the Court may direct, and the Court shall have power to require any explanations or reasons from the Registrar or other officer of the Court and to remit the cause or matter, or any part thereof for further enquiry to the same or any other officer of the Court.

E. O. xxxv. R. 34.

RULE 164.

Report to be filed.—The report of a Judge, or the Registrar, or other officer of the Court, to whom a reference has been made, shall be filed as soon as possible after it is signed, and shall become absolute and non-appealable if not appealed against within *fourteen days* after service of notice of the filing of the same.

Taylor's C. Chy. O. 252.

RULE 165.

Appeal from report.—Within *fourteen days* after service of the notice of the filing of any report, any party may, by a motion of which at least *eight days'* notice is to be given, appeal to the Court against any report, and upon

such appeal motion, the Court may reverse the findings of the report or vary or refer it back for further consideration to the Judge, Registrar or other officer of the Court, as the case may be.

Taylor's C. Chy. O. 253.

EXECUTION.

RULE 166.*

Proceedings where judgment against Crown directing payment of money.—No execution can issue on a judgment against the Crown for the payment of money. Where in any proceeding by information by the Attorney-General, there may be a judgment against the Crown directing the payment of money for costs, or otherwise, a Judge may on the application of the party entitled to the money, certify to the Minister of Finance, the tenor and purport of the judgment, and such certificate shall be by the Registrar sent to or left at the Office of the Minister of Finance.

RULE 167.

Judgment for payment of money against any party other than Crown may be enforced by fi. fa. or sequestration.—A judgment or order for the payment of money against any party to a suit other than the Crown may be enforced by writs of *fiery facias* against goods *fiery facias* against lands or sequestration.

RULE 168.

Judgment for payment of money into Court may be enforced by sequestration.—A Judgment for the payment of money into Court may be enforced by writ of Sequestration.

E. O. xlii. R. I.

RULE 169.

For recovery or delivery of possession of land by writ of possession.—A judgment for the recovery of

or the delivery of possession of land may be enforced by writ of possession.

E. O. xlii. R. 3.

RULE 170.

Where judgment for recovery of any property other than land or money.—A judgment for the recovery of any property other than land or money may be enforced—

By writ for delivery of the property ;

By writ of attachment ;

By writ of sequestration.

E. O. xlii. R. 4.

RULE 171.

Where judgment requires the doing or abstaining from any act.—A judgment requiring any person to do any act other than the payment of money or to abstain from doing anything may be enforced by writ of attachment or by committal.

E. O. xlii. R. 5.

RULE 172.

No attachment to issue to compel payment of money.—No writ of attachment or other writ or process against the person is to issue to compel the payment of money

RULE 173.

Meaning of terms "writ of execution" and "issuing execution against any party."—In these rules the term "writ of execution" shall include writs of *feri facias* against goods and against lands, sequestration and attachment and all subsequent writs that may issue for giving effect thereto. And the term "issuing execution against any party" shall mean the issuing of any such process against his person or property as under the preceding rules shall be applicable to the case.

E. O. xlii. R. 6.

RULE 174.

No execution to be issued without production of judgment.—No writ of execution shall be issued without the production to the officer by whom the same should be issued of the judgment upon which the writ of execution is to issue, or an office copy thereof shewing the date of entry. And the officer shall be satisfied that the proper time has elapsed to entitle the judgment creditor to execution.

E. O. xlii. R. 9.

RULE 175.

Proceipe to be issued.—No writ of execution shall be issued without a *proceipe* being filed for that purpose.

E. O. xlii. R. 10

RULE 176.

When writ to be dated.—Every writ of execution shall bear date of the day on which it is issued.

E. O. xlii. R. 12.

RULE 177.

Poundage fees and expenses of execution may be levied.—In every case of execution the party entitled to execution may levy the interest, poundage fees and expenses of execution over and above the sum recovered.

E. O. xlii. R. 13.

RULE 178.

How writ to be endorsed.—Every writ of execution shall be endorsed with the name and residence of the attorney or solicitor who issues the same, and if issued through an agent the name and residence of the agent also.

E. O. xlii. R. 11.

RULE 179.

Directions to sheriff on.—Every writ of execution for the recovery of money shall be endorsed with a direction to the sheriff or other officer to whom the writ is directed to levy the money really due and payable and sought to be recovered under the judgment stating the amount, and also to levy interest thereon if sought to be recovered, at the rate of six per cent per annum from the time when the judgment was entered up.

E. O. xlii. R. 14.

RULE 180.

Writs of fi. fa. may be issued immediately after judgment entered except in certain cases.—Every person to whom any sum of money or any costs shall be payable under a judgment, shall immediately after the time when the judgment was duly entered, be entitled to sue out one or more writ or writs of *fieri facias* against goods and against lands to enforce payment thereof, subject nevertheless as follows :

- (a). If the judgment is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period.
- (b). The Court or Judge at the time of giving judgment, or the Court or a Judge afterwards, may give leave to issue execution before, or may stay execution until any time after the expiration of the periods hereinbefore prescribed.

E. O. xlii. R. 16.

RULE 181.

Renewing writs.—A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided ; but such writ may, at any time before its expiration, by leave of the Court or a Judge, be renewed by the party issuing it for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ,

either by being marked with a seal of the Court bearing the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his attorney, and bearing the like seal of the Court ; and a writ of execution so renewed shall have effect, and be entitled to priority according to the time of the original delivery thereof.

E. O. xlii. R. 16.

RULE 182.

Evidence of Renewal.—The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal as in the last preceding rule mentioned, showing the same to have been renewed, shall be sufficient evidence of its having been so renewed.

E. O. xlii. R. 17.

RULE 183.

Execution may issue within six years.—As between the original parties to a judgment, execution may issue at any time within six years from the recovery of the judgment.

E. O. xlii. R. 18.

RULE 184.

After that time by leave of Court or Judge.—Where six years have elapsed since the judgment, or any change has taken place by death or otherwise in the parties entitled or liable to execution, the party alleging himself to be entitled to execution may apply to the Court or a Judge for leave to issue execution accordingly. And such Court or Judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties, shall be tried in any of the ways in which any question in an action may be tried. And in either case such Court or Judge may impose such terms as to costs or otherwise as shall seem just.

E. O. xlii. R. 19.

RULE 185.

Every order of a Court or a Judge may be enforced in the same manner as judgment. - Every order of the Court or a Judge, whether in an action, cause or matter, may be enforced in the same manner as a judgment to the same effect, and it shall in no case be necessary to make a Judge's order a rule or order of the Court before enforcing the same.

E. O. xlii. R. 20.

RULE 186.

Enforcing order or judgment against person not being party to an action.—Any person not being a party in an action who obtains any order, or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to the action, and any person not being a party in an action against whom obedience to any judgment or order may be enforced shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to the action.

E. O. xlii. R. 21.

RULE 187.

Application for stay of execution.—Any party against whom judgment has been given may apply to the Court or a Judge for a stay of execution or other relief against such judgment upon the ground of facts which have arisen too late to be pleaded, and the Court or Judge may give such relief and upon such terms as may be just.

E. O. xlii. R. 22.

WRITS OF FIERI FACIAS.

RULE 188.

Forms of writs of *fi. fa.*—Writs of *feri facias* against goods and lands may be in the forms given in Schedule P, and shall be executed according to the exigency thereof.

RULE 189.

What interests may be sold under such writs.—Any interest equitable as well as legal of an execution debtor in goods or lands may be sold under writs of *feri facias*.

RULE 190.

Lands not to be sold until after lapse of six months.—Lands shall not be sold under a writ of *feri facias* until after the lapse of *six months* from the seizure by the sheriff, or other officer.

RULE 191.

Lands and goods to be bound from delivery of writ.—Lands and goods respectively shall be bound for the purposes of execution from the date of the delivery of writs of *feri facias* to the Sheriff or other officer.

RULE 192.

Writ of *venditioni exponas* may issue, form of.—Upon the return of the Sheriff or other officer, as the case may be, of "lands or goods on hand for want of buyers" a writ of *venditioni exponas* in the form in Schedule Q may issue to compel the sale of the property seized.

RULE 193.

Sheriff to follow laws of his province as to mode of selling.—In the mode of selling lands and goods and of advertising the same for sale, the Sheriff or other officer is, except in so far as the exigency of the writ otherwise requires or as is otherwise provided by these orders to follow the laws of his Province applicable to the execution of similar writs issuing from the highest Court or Courts of original jurisdiction therein.

RULE 194.

Writ of attachment to be executed according to exigency thereof.—A writ of attachment shall be executed according to the exigency thereof.

RULE 195.

No writ of attachment to be issued without leave of Court or Judge.—No writ of attachment shall be issued without the order of the Court or a Judge.

WRIT OF SEQUESTRATION.

RULE 196.

When writ of sequestration may issue.—When any person is by any judgment or by any order of the Court or Judge directed to pay money into Court or to do any other act in a limited time, and after due service of such judgment or order refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment or order shall at the expiration of the time limited for the performance thereof be entitled without obtaining an order for that purpose to issue a Writ of Sequestration against the estate and effects of such disobedient person.

E. O. xlvii.

RULE 197.

Form and effect of. Such Writ of Sequestration may be in the form given in Schedule R hereto, and it shall have the same effect as the Writ of Sequestration in use in Her Majesty's High Court of Justice, in England has, and the proceeds of the Sequestration subject to the provisions of these Rules, may be dealt with in the same manner as the proceeds of Writs of Sequestration are dealt with according to the practice in that behalf in use in Her Majesty's said High Court of Justice.

RULE 198.

Court or Judge may order proceeds of to be paid into Court.—The Court or a Judge may, in its or his discretion, order the proceeds of any writ of sequestration whether the same be lands goods or other property to be sold and the money produced by the sale to be paid into Court.

WRIT OF POSSESSION.

RULE 199.

When writ of possession may issue.—A judgment that the Crown or any other party do recover possession of any land may be enforced by Writ of Possession in manner heretofore used in actions of ejectment in the Superior Courts of Common Law in England.

E. O. xlviii. R. 1.

RULE 200.

May issue on affidavit.—Where by any judgment any person therein named is directed to deliver up possession of any lands to the Crown or some other party, the party prosecuting such judgment shall without any order for that purpose be entitled to sue out a Writ of Possession on filing an affidavit shewing due service of such judgment, and that the same has not been obeyed.

E. O. xlviii. R. 2.

WRIT OF DELIVERY.

RULE 201.

Writ of delivery.—A writ for delivery of any property other than land or money may be in the form in Schedule S hereto and may be issued and enforced in the manner heretofore in use in actions of *detinue* in the Superior Courts of Common Law in England.

E. O. xlix.

CHANGE OF PARTIES BY DEATH.

RULE 202.

Action not to be abated by marriage, &c.—

An action shall not become abated by reason of the marriage, death, or insolvency of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title *pendente lite*.

E. O. 1. R. 1.

RULE 203.

Addition of parties in certain cases.—In case of the marriage, death, or insolvency or devolution of estate by operation of law, of any party to an action, the Court or a Judge may, if it be deemed necessary for the complete settlement of all the questions involved in the action, order that the husband, personal representative, assignee, or other successor in interest, if any, of such party be made a party to the action, or be served with notice thereof in such manner and form as hereinafter prescribed, and on such terms as the Court or Judge shall think just and shall make such order for the disposal of the action as may be just.

E. O. 1. R. 2.

RULE 204.

Continuation of action in case of assignment or change of estate or title.—In case of an assignment, creation, or devolution of any estate or title *pendente lite*, the action may be continued by or against the person to or upon whom such estate or title has come or devolved.

E. O. 1. R. 3.

RULE 205.

Adding or changing parties in certain cases.—

Where by reason of marriage, death or insolvency, or any other event occurring after the commencement of an action,

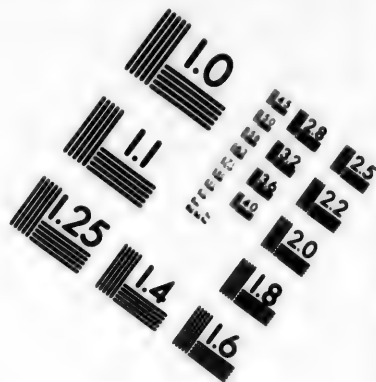
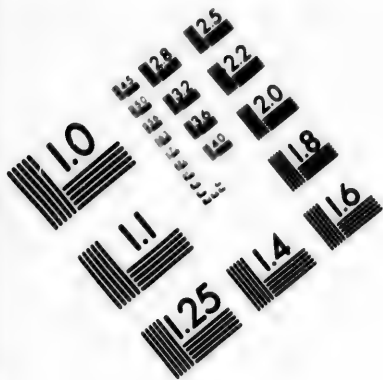
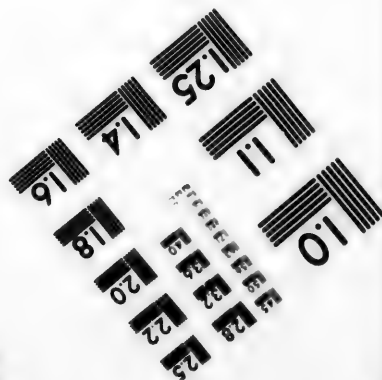
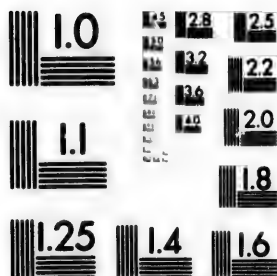


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and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the action, it becomes necessary or desirable that any person not already a party to the action should be made a party thereto, or that any person already a party thereto shall be made a party thereto in another capacity, an order that the proceedings in the action shall be carried on between the continuing parties to the action, and such new party or parties may be obtained *ex parte* on application to the Court or a Judge, upon an allegation of such change, or transmission of interest or liability, or of such person interested having come into existence.

E. O. I. R. 4.

RULE 206.

Service of order for.—An order so obtained shall, unless the Court or Judge shall otherwise direct, be served upon the continuing party or parties to the action, or their attorneys or solicitors, and also upon each such new party, unless the person making the application be himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following Rules, be binding on the persons served therewith, and every person served therewith who is not already a party to the action shall be bound to file his defence thereto within the same time and in the same manner as if he had been served with a copy of the Information, Petition of Right, or Statement of Claim, as the case may be.

E. O. I. R. 5.

RULE 207.

Application may be made to discharge or vary such order.—Where any person who is under no disability or under no disability other than coverture, or being under any disability other than coverture, but having a guardian *ad litem* in the action, shall be served with such order, such person may apply to the Court or a Judge to discharge or vary such order at any time within *twelve days* from the service thereof.

E. O. I. R. 6.

RULE 208.

Where person served is under any disability.—Where any person being under any disability other than coverture, and not having a guardian *ad litem* appointed in the action, is served with any such order, such person may apply to the Court or a Judge to discharge or vary such order at any time within *twelve days* from the appointment of a guardian or guardians *ad litem* for such party, and until such period of *twelve days* shall have expired such order shall have no force or effect as against such last-mentioned person.

E. O. I. R. 7.

INTERLOCUTORY ORDERS AS TO INJUNCTIONS, RECEIVERS
AND PAYMENT INTO COURT.

RULE 209.*

Injunctions and receivers.—An injunction may be granted or a receiver appointed by an interlocutory order of the Court or a Judge in all cases in which it shall appear to the Court or Judge to be just or convenient that such order should be made, and any such order may be made *ex parte* or on notice, and either unconditionally or upon such terms and conditions as the Court or Judge shall think just.

RULE 210.*

Conservatory orders.—The Court or a Judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be paid into Court or otherwise secured.

E. O. III. R. 1.

RULE 211.*

How money to be paid into Court.—Any party directed by any order of the Court or a Judge to pay money into Court must apply at the office of the Registrar for a direction so to do, which direction must be taken to the Ottawa Branch or agency of the Bank of Montreal, and the

money there paid to the credit of the cause or matter, and after payment the receipt obtained from the Bank must be filed at the Registrar's Office.

RULE 212.*

Order for payment of money out of Court.—If money is to be paid out of Court an order of the Court or a Judge must be obtained for that purpose upon notice to the opposite party.

RULE 213.*

How money to be paid out of Court.—Money ordered to be paid out of Court is to be so paid upon the cheque of the Registrar, countersigned by a Judge.

MOTIONS AND OTHER APPLICATIONS TO THE COURT.

RULE 214.*

Sittings of Judges in Court.—A Judge shall sit in open Court every Monday, or on the next juridical day in the event of any Monday being a holiday, for the purpose of hearing the argument of demurrers, special cases, motions for judgment appeals from the reports of the Registrar or other officer of the Court, and all other motions, applications and business, which cannot be transacted by a Judge in Chambers except the trial or hearing of causes.

RULE 215.*

Setting down of demurrers, special cases and motions.—Demurrers, special cases, motions for judgment, ordinary motions on notice and petitions are to be set down to be heard at least *two days* before the hearing, unless the Court or a Judge shall otherwise order, and are to be called on in the order in which they may be set down.

RULE 216.*

Last rule not to apply to *ex parte* motions.—
The last foregoing rule is not to apply to *ex parte* motions.

RULE 217.*

Application to be made to a Judge in Court by motion.—Where by these Rules any application is authorized to be made to the Court or a Judge in an action, such application if made to a Judge in Court, shall be made by motion.

E. O. III. R. 1.

RULE 218.*

No rule or order to show cause to be granted except where authorized by these rules.—No rule or order to show cause shall be granted in any action, except in the cases in which an application for such rule or order is expressly authorized by these Rules.

E. O. III. R. 2.

RULE 219.*

Motions to be on notice.—Unless authorized by these Rules to be made *ex parte* motions are to be on notice unless the Court or a Judge shall think fit in the interests of justice to dispense with notice.

E. O. III. R. 3.

RULE 220.*

Notice to be served two clear days before hearing.—Unless the Court or Judge give special leave to the contrary there must be at least *two clear days* between the service of a notice of motion and the day named in the notice for hearing the motion.

E. O. III. R. 4.

RULE 221.

Proceedings where notice not given to proper parties.—If on the hearing of a motion or other application the Court or Judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court or Judge may either dismiss the notice or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court or Judge may think fit to impose.

E. O. III. R. 5.

RULE 222.

Hearing of any motion may be adjourned.—The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court or Judge shall think fit.

E. O. III. R. 6.

RULE 223.

Notice may be served without special leave in certain cases.—The Attorney-General, plaintiff or petitioner shall, without any special leave, be at liberty to serve any notice of motion or other notice, or any petition or summons upon any defendant, who, having been duly served with the information or petition of right, has not answered within the time limited for that purpose.

E. O. III. R. 7.

RULE 224.

May be served with or after filing of information or petition of right by leave.--The Attorney-General, plaintiff or petitioner may, by leave of the Court or a Judge to be obtained *ex parte*, serve any notice of motion upon any defendant along with the information, petition of right, or statement of claim or at any time after a service of the information, petition of right or statement of claim and before the time limited for the answer of such defendant.

E. O. III. R. 8.

APPLICATION AT CHAMBERS.

RULE 225.

Application at Chambers.—Every application to a Judge at Chambers authorized by these rules shall be made in a summary way by summons.

E. O. liv. R. 1.

RULE 226.

Judge may rescind his own order.—Any Judge may rescind his own order by an order made in Chambers.

COSTS.

RULE 227.*

Costs may be awarded against the Crown.—Costs may be awarded against the Crown, subject to the provisions of these rules, that no execution shall issue on a judgment or order for payment of money by the Crown.

RULE 228.*

Provisions as to costs.—The costs of and incident to all proceedings in the said Exchequer Court, shall be in the discretion of the Court or Judge, as the case may be, provided that where any action or issue is tried by a jury, the costs shall follow the event unless upon application made at the trial for good cause shown the Judge before whom such action or issue is tried, or the Courts shall otherwise order.

E. O. lv.

RULE 229.*

How to be taxed.—All costs between party and party shall be taxed pursuant to the tariff contained in Schedule T to be annexed to these orders and such taxation shall be by the Registrar in person, and shall not be delegated to any

other officer of the Court except in the unavoidable absence of the Registrar from illness or any other cause, when the taxation shall be before the officer appointed by the Court to perform the Registrar's duties in his necessary absence.

Security for costs.—No special rule as to security for costs has been made by the Judges, but in *Wood vs. the Queen* in the Exchequer Court of Canada (Canada Law Journal, January, 1877), it was held that an application for security for costs must be made before the time allowed for filing the defence has expired, except under special circumstances. By special circumstances is meant, probably, cases in which the residence of the petitioner or plaintiff does not appear on the face of the petition or statement of claim, and in which the defendant by reasonable enquiry could not have ascertained such place of residence. In such cases, no doubt, the application should be made as soon as possible after knowledge of the foreign residence has been acquired.

RULE 230.

Witness fees.—Witness shall be entitled to be paid the fees and allowances prescribed by Schedule U annexed hereto.

APPEALS TO THE SUPREME COURT.

RULE 231.*

Appeals to the Supreme Court.—No decision or ruling at the trial or hearing of a cause shall be appealed from directly to the Supreme Court, but the party dissatisfied therewith must first seek relief by moving before the Exchequer Court as hereinbefore provided, and the appeal shall be from the refusal to grant an order *nisi* or, if an order shall have been granted, from the decision of the Court on the motion to make the same absolute.

RULE 232.*

Case in appeal how to be settled and what to contain.—The case, in appeal from the Exchequer Court to the Supreme Court, is, in case the parties differ about the same, to be settled by a Judge upon *one day's* notice of an appointment for that purpose to be served by the party

intending to appeal on the opposite party, and it is to contain the pleadings and evidence or such parts thereof as the Judge may think material, and also a copy of any written judgment pronounced by the Judge whose decision is appealed from; or in case no written judgment has been pronounced a note showing the grounds and reasons for the decision.

AGENTS AND SERVICE OF PAPERS.

RULE 233.*

The Agent's Book.—There is to be kept in the Registrar's Office a book of the said Exchequer Court to be called the Agent's Book, in which may be entered the names of persons residing at the City of Ottawa, and entitled to practice in the said Court who are to act as agents for attorneys and solicitors residing in other places.

RULE 234.*

When the party appears in person.—Any party to any action or suit or other proceeding not residing at the said City of Ottawa, who appears in person, may also enter in the said book some place within the limits of the said city at which papers may be left for service upon him and which shall be called his address for service.

RULE 235.*

Service in case of neglect to enter name.—In case the attorney or solicitor in any action, suit or other proceeding, shall have neglected to enter the name of an agent, or a party appearing in person to enter an address for service in the said book, papers not requiring personal service may be served by affixing them in the office of the Registrar in some conspicuous place therein.

WRITS.

RULE 236.*

Writs.—All writs shall be prepared in the office of the Attorney-General or by the attorney or solicitor suing out

the same, and the name and address of the attorney or solicitor suing out the same shall be endorsed on such writ, and every such writ shall before the issuing thereof be sealed at the office of the Registrar and a *præcipe* therefor shall be left at the said office, and thereupon an entry of issuing such writ, together with the date of sealing and the name of the attorney or solicitor suing out the same, shall be made in a book to be kept in the Registrar's office for that purpose, and all writs shall be tested of the day, month and year when issued.

Rules regulating procedure in suits by English information. Rule xviii.

RULE 237.*

Supœnas.—Supœnas to witnesses may be in the form set forth to Schedule V to these orders annexed.

RULE 238.*

Writs in revenue causes, how to be tested.—All writs in revenue causes are to be tested with the date on which they issue.

RULE 239.*

Writs may be amended.—Any writ, may at any time be amended by order of the Court or Judge upon such conditions and terms as to costs and otherwise as may be thought just, and any amendment of a writ may be declared by the order authorising the same to have relation back to the date of its issue or to any other date or time.

RECOGNIZANCES.

RULE 240.*

Recognizances.—Recognizances in revenue and all other causes may be taken and acknowledged before any Commissioner or other officer having authority to take recognizances of bail in the Supreme and Exchequer Courts.

RULE 241.*

May be on paper.—Recognizances may be prepared on paper.

OFFICERS OF THE COURT.**RULE 242.***

Registrar's office hours.—The Registrar is to keep his office open each day except Sundays and holidays, from 10 in the forenoon until 4 o'clock in the afternoon, and all officers of the Court are to be in attendance during those hours.

RULE 243.*

Registrar's office hours in vacation.—During vacation the Registrar's office is to be kept open each juridical day from 11 in the forenoon to 12 o'clock, noon.

RULE 244.*

Books to be kept in Registrar's office.—There are to be kept in the Registrar's office all books necessary and proper for recording and entering all proceedings in Court and Chambers, and in which all judgments, reports, orders, rules, filings of pleadings, and other papers are to be entered.

RULE 245.*

Registrar's ministerial powers.—The Registrar shall have power in revenue causes to do any ministerial act which the Queen's Remembrancer in Her Majesty's late Court of Exchequer in England could have done in the same class of cases, and when any proceedings in such cases in the said Court of Exchequer were required to be taken in the office of the Queen's Remembrancer the same proceedings may be taken here in the office of the Registrar.

RULE 246.*

Sheriff's fees.—Sheriff's and Coroners shall be entitled to the fees and poundage prescribed by Schedule W to be hereto annexed.

VACATIONS.**RULE 247.***

Christmas vacation.—There shall be a vacation at Christmas, commencing on the 15th of December, and ending on the 8th of January.

RULE 248.*

Long Vacation.—The long vacation shall comprise the months of July and August.

COMPUTATION OF TIME.**RULE 249.***

Computation of time.—In all cases in which any particular number of days not expressed to be clear days, is prescribed by the foregoing rules, the same shall be reckoned exclusively of the first day and inclusively of the last day, unless such last day, shall happen to fall on a Sunday, or on a day appointed by the Governor General for a public fast or thanksgiving, or any other legal holiday or non-juridical day, as provided by the statutes of the Dominion of Canada.

RULE 250.*

Months to be calendar months.—Where by these rules, the time for doing any act or taking any proceeding is limited by months, not expressed to be lunar months, such time shall be computed by calendar months.

E. O. 1vii R. 1.

RULE 251.*

Certain days not to be computed.—Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, or a day appointed as aforesaid for a public fast or thanksgiving, or any other non-judicial day or legal holiday, shall not be reckoned in the computation of such limited time.

E. O. lvii. R. 2.

RULE 252.*

Where time for taking any proceeding expires on a Sunday or a day on which office is closed.—Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

E. O. lvii. R. 3.

RULE 253.*

No pleadings to be amended or delivered in long vacation.—No pleadings shall be amended or delivered in the long vacation, unless directed by the Court or a Judge.

E. O. lvii. R. 4

RULE 254.*

Long vacation not to be reckoned in computation of time.—The time of the long vacation shall not be reckoned in the computation of the times appointed or allowed by these rules for filing, amending or serving any pleading, unless otherwise directed by the Court or a Judge.

E. O. lvii. R. 5.

RULE 255.*

Powers of Court or Judge as to enlarging or abridging time.—The Court or a Judge shall have power to enlarge or abridge the time appointed by these rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered, although the application for the same is not made until after the expiration of the time appointed or allowed.

E. O. lvi. R. 6.

GENERAL PROVISIONS.**RULE 256.***

Formal objections not to prevail.—No proceeding in the said Court shall be defeated by any merely formal objection.

RULE 257.*

Effect of non-compliance with rules.—Non-compliance with any of these rules shall not render the proceedings in any action void unless the Court or a Judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended or otherwise dealt with in such manner and upon such terms as the Court or Judge shall think fit.

E. O. lix.

RULE 258.

In proceedings not provided for practice of Her Majesty's High Court of Justice in England to be followed.—In provisions to which the provisions of Rule 1 shall not apply and which are not otherwise provided for by these rules, the practice in use in Her Majesty's High Court of Justice in England shall be had recourse to and followed as nearly as may be.

INTERPRETATION.

RULE 259.*

In the preceding rules the term "a Judge" means any Judge of the said Exchequer Court transacting business out of Court.

RULE 260.

In the preceding rules the following words have the several meanings hereby assigned to them over and above their several ordinary meanings, unless there be something in the subject or context repugnant to such construction, that is to say :

1. Words importing the singular number, include the plural number, and words importing the plural number include the singular number.
2. Words importing the masculine gender, include females.
3. The word "party" or "parties" and words "Plaintiffs" and "Defendants" include a body politic or corporate, and also Her Majesty and Her Majesty's Attorney General.
4. The Word "Affidavit" includes affirmation.
5. The words "Revenue Causes" include the several classes of cases mentioned in Section 58 of the said Act.
6. The words "Non-revenue Causes" include the several classes of cases mentioned in Section 59 of the said Act as well as a Petition of Right.
7. The word "Petitioner" used alternatively with the words "Attorney-General" and "Plaintiff," shall mean the Petitioner in any Petition of Right.
8. The word "action" shall include a suit or proceeding by information by the Attorney-General as well as a Petition of Right or an action by a private suitor.

Rules regulating procedure in suits by English Information.
Rule xxiv.

RULES APPLICABLE TO CAUSES, IN WHICH CAUSE OF ACTION HAS ARISEN IN PROVINCE OF QUEBEC.

RULE 261.

Rules applicable to Province of Quebec.—The foregoing rules numbered 1 to 5, both inclusive, 9 to 13, both inclusive, 27, 29, 78, 79, 86 to 105, both inclusive, 111 to 117, both inclusive, 120, 125, 129 to 132, both inclusive, 134, 135, 166, 209 to 220, both inclusive, 227 to 257, both inclusive, 259 and 260 shall be applicable to actions in which the cause of action shall have arisen in the Province of Quebec.

Dated this fourth day of March, 1876.

(Signed)	WM. B. RICHARDS, C. J.
"	W. J. RITCHIE, J.
"	S. H. STRONG, J.
"	J. T. TASCHEREAU, J.
"	T. FOURNIER, J.
"	W. A. HENRY, J.

PETITIONS OF RIGHT.

IN THE COURT OF EXCHEQUER.

GENERAL ORDER.

[Tuesday, April 25th, 1876.]

In pursuance of the provisions contained in the Petition of Right Act, 1876, it is ordered :

That the general rules and Orders of the Exchequer Court made and promulgated on the fourth day of March, 1876, under and pursuant to the Petition of Right Act, Canada, 1875, and the Supreme and Exchequer Court Act, shall, so far as the same may be applicable, apply to

Petitions of Right and other proceedings taken under the said Petition of Right Act, 1876.

(Signed)	WM. B. RICHARDS, C. J.
"	W. J. RITCHIE, J.
"	S. H. STRONG, J.
"	J. T. TASCHEREAU, J.
"	T. FOURNIER, J.
"	W. A. HENRY, J.

IN THE COURT OF EXCHEQUER.

GENERAL ORDER 263.

[Tuesday, February 12th, 1878.]

The Rules of the Exchequer Court of Canada promulgated on the fourth day of March, 1875, and numbered one hundred and thirty-eight, one hundred and thirty-nine, one hundred and forty, one hundred and forty-one, one hundred and forty-two, are hereby ordered and declared to be, and to have been, applicable to actions, in which the cause of action shall have arisen in the Province of Quebec.

(Signed)	WM. B. RICHARDS, C. J.
"	W. J. RITCHIE, J.
"	S. H. STRONG, J.
"	T. FOURNIER, J.
"	W. A. HENRY, J.

EXCHEQUER COURT OF CANADA.

GENERAL ORDER 264.

It is ordered, that during the absence from the City of Ottawa, of Robert Cassels, Jr., Esq., the Registrar of this Court, or until further order, the functions and duties of the said Registrar, including the taxation of costs, be performed by George Duval, Esq., the Précis Writer of this Court.

Dated Ottawa, 10th September, 1877.

(Signed)	WM. B. RICHARDS, C. J.
"	WM. J. RITCHIE, J.
"	S. H. STRONG, J.
"	J. T. TASCHEREAU, J.
"	T. FOURNIER, J.

SCHEDULE A.*(Form of Information).**(Rule No. 6).*

CANADA,

Province of....

} In the Exchequer Court of Canada.

Filed 10th March, 1876.

The Queen, on the information of the Attorney-General for the Dominion of Canada,

Plaintiff,

AND

JOHN SMITH,

*Defendant.*To the Honorable the Chief Justice and Justices of the
Exchequer Court of Canada :The information of The Honorable.....Her
Majesty's Attorney-General for the Dominion of Canada,
on behalf of Her Majesty,

SHEWETH AS FOLLOWS :

(Here state facts concisely).

CLAIM.

The Attorney-General, on behalf of Her Majesty the
Queen, claims as follows :

Signature, E. B.,

Attorney-General.

SCHEDULE B.

(Rule No. 6).

rt of Canada.

the Attorney-
f Canada,*Plaintiff,**Defendant.*

Justices of the

.....Her
on of Canada,

AS FOLLOWS:

Majesty the

ey-General.

(Rule 7).

(Form of Statement of Claim in Action on Postmaster's Bond).

CANADA,

Province of.....

} In the Exchequer Court of Canada.

Filed 10th March, 1876.

The Postmaster-General,

Plaintiff,

AND

A. B., C. D. and E. F.,

Defendants.

STATEMENT OF CLAIM.

1. The defendants, by their bond bearing date the..... day of.....A.D. 18.., became jointly and severally bound to our Sovereign Lady the Queen, in the sum of \$....., to be paid by the said defendants to our said Lady the Queen, subject to certain conditions thereunder written, upon fulfilment whereof the said bond was to become void.

2. One of the said conditions was and is that the said A. B. should, from time to time, and at all times when thereunto required, well and truly pay over to the Postmaster-General for Canada all sums as might or ought to be had and received by him for the sale and disposal of postage stamps and stamped envelopes, according to the value of the same respectively, entrusted to him for sale as Postmaster at, &c.

3. Postage stamps and stamped envelopes to the value of one thousand dollars were, on.....day of....., or thereabouts, entrusted to the said A. B., as Postmaster at, &c., for sale, and he has sold the same.

4. The said A. B. has paid over only \$100 of the amount received by him on account of such sale, and refuses to account for the balance of the amount received by him for the sale of the said postage stamps and stamped envelopes, although he has been required to do so.

5. A statement of the account of the said A. B. as such Postmaster and attested as correct by the certificate and signature of the accountant of the Post Office of Canada, shows such balance of \$900 to be due and unpaid by the said A. B. ; and, by virtue of the "Post Office Act of 1875," the plaintiff is entitled to demand judgment against the defendants for double the amount of the said balance.

The plaintiff claims—

1. Judgment against the said defendants, jointly and severally, for the sum of \$1,800, and costs of suit.

SCHEDULE C.

(Rule 14).

(*Endorsement on Information or Statement of Claim*).

Notice to the defendant who is named :

You are required to file with the Registrar of the Exchequer Court of Canada at his office at the City of Ottawa, your plea, answer, exception or demurrer, or otherwise make your defence to the within information or statement of claim [*as the case may be*] within.....from the service hereof. If you fail to file your plea, answer, exception or demurrer, or otherwise make your defence within the time above limited you are to be subject to have such judgment, decree or order made against you as the Court may think just upon the informant's (or plaintiff's) own showing, and if this notice is served upon you personally you will not be entitled to any further notice of the further proceedings in the cause.

NOTE.—This Information (*or* statement of claim) is filed by A. B., &c., Her Majesty's Attorney-General for the Dominion of Canada, on behalf of Her Majesty (*or* byof the City of Ottawa, Solicitor, for the within-named plaintiff).

SCHEDULE D.

(Rule 24).

(Advertisement in case of a Defendant not to be found).

CANADA,

Province of

} In the Exchequer Court of Canada.

Between

A. B.,

Plaintiff,

AND

C. D.,

Defendant.

(Copy Order).

To the defendant C. D. :

Take notice that unless you file your plea, answer, demurrer, exception or otherwise make your defence pursuant to the requirements of the above order, the Court or Judge may direct that the case shall thereafter proceed as though you had filed a plea, answer or defence, traversing and denying the allegations contained in the information *(or statement of claim)* filed in this cause, and the action will thereafter proceed accordingly.

SCHEDULE E.

FORMS OF PLEADINGS.

*(Form of Information of Intrusion).**(Rule 32).*

CANADA,

Province of.....

} In the Exchequer Court of Canada.

Filed 10th March, 1876.

The Queen, on the information of the Attorney-
General for the Dominion of Canada,

Plaintiff,

AND

JOHN SMITH,

Defendant.

To the Honorable the Chief Justice and Justices of the
Exchequer Court of Canada :

The information of the Honorable.....Her
Majesty's Attorney-General for the Dominion of Canada, on
behalf of Her Majesty,

SHEWETH AS FOLLOWS :

1. That certain lands and premises situate in the City of
Ottawa, in the County of Carleton, and Province of Ontario,
and being, &c., on the first day of October, in the year of
our Lord, 1875, and long before were and still ought to be
in the hands and possession of Her Majesty the Queen.

2. That the Defendant on the said first day of October, in
the year aforesaid in and upon the possession of the said
Lady the Queen, of and in the premises, entered intruded

and made entry, and the issues and profits thereof coming received and had and yet doth receive and have to his own use.

CLAIM.

The Attorney-General, on behalf of Her Majesty the Queen, claims as follows :

1. Possession of the said lands and premises.
2. \$.....for the issues and profits of the said lands and premises from the said first day of October A.D. 1875, till possession shall be given.

(Signed,)

.....

Form of QUI TAM Action.

CANADA,	} In the Exchequer Court of Canada.
Province of Ontario.	

Filed 10th March, 1876.

A. B. who sues as well for the Queen as for himself.

Plaintiff.

AND

C. D.

Defendant.

STATEMENT.

1. By Section 3 of the Act passed by the Legislature of Canada in the 37th year of Her Majesty's reign, intituled : " An Act to amend the Law relating to Bills of Exchange and Promissory Notes, and the stamps thereon," it is enacted, among other things, as follows : [" *Set forth the material part of the Section.*"]

2. The said C. D. who was and is a broker within the meaning of the said Section, received on or about the first day of February A. D. 1876, from one E. F. in payment of a debt due by the said E. F. to him the said C. D., a certain Bill of Exchange drawn by one G. H. upon and accepted by one K. L., for the sum of \$300, and bearing date the twentieth day of January, A. D., 1876, which said Bill of Exchange was not duly stamped; and at the time the said C. D. so received the said Bill of Exchange he knew the same not to be duly stamped, but he did not on receiving the same affix thereto and cancel the proper stamps within the meaning of the Act thirty-first Victoria, chapter nine.

CLAIM.

The Plaintiff claims—

1. Judgment against the said defendant for the said sum of \$500, and costs of suit.

[TITLE.]

STATEMENT OF DEFENCE.

1. The Bill of Exchange mentioned in the statement of claim, was duly stamped when received by the said C. D. *[Add any other grounds of defence—each one to be stated concisely in a separate paragraph.]*

[TITLE.]

REPLY.

1. The Plaintiff joins issue upon the Defendant's statement of defence.

(Add any other grounds of reply in concise separate paragraphs.)

SCHEDULE F.*(Form of Admission of Defence.)**(Rule 48.)*

CANADA,

Province of.....

{ In the Exchequer Court of Canada.

Between

A. B.

Plaintiff.

AND

C. D.,

Defendant.

The Informant (or Plaintiff) confesses the defence stated in the.....paragraph of the Defendant's statement of defence [*or, of the Defendant's further statement of defence*].

SCHEDULE G.*(Form of Demurrer.)**(Rule 67.)*

CANADA,

Province of.....

{ In the Exchequer Court of Canada.

Between

A. B.,

Plaintiff,

AND

C. D.,

Defendant.

The Defendant [Plaintiff] demurs to the [Plaintiff's statement of complaint; *or, Defendant's statement of defence, or, of set off, or of counter claim;*] [*or to so much of the plaintiff's statement of complaint as claims....., or as alleges as a breach of contract the matters mentioned inparagraph, or as the case may be*], and says that the same is bad in law, on the ground that [*here states grounds of demurrer.*]

2. I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. That (*here state upon what grounds the objection is made, and verify the facts as far as may be.*)

4. I have had, but have not now, in my possession or power, the documents relating to the matters in question in this suit, set forth in the second schedule hereto.

5. The last-mentioned documents were last in my possession or power on (*state when*).

6. That (*here state what has become of the last-mentioned documents, and in whose possession they now are.*)

7. According to the best of my knowledge, information and belief, I have not now and never had in my possession, custody or power, or in the possession, custody or power of my solicitors or agents, solicitor or agent, or in the possession, power or custody of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy or extract any from such document, or of any other document whatsoever relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the first and second schedules hereto.

Sworn, &c.

}

SCHEDULE K.

(Rule 98.)

(Form of notice to produce documents.)

CANADA,

} In the Exchequer Court of Canada.

Province of.....

}

A. B. vs. C. D.

Take notice that the (plaintiff or defendant) requires you to produce for his inspection the following documents re-

ferred to in your (statement of claim or defence, or affidavit,
dated the.....day of.....A.D.....).
Describe documents required.

Dated at.....day of.....18....

X. Y.

Solicitor to the.....

To Z., Solicitor for.....

SCHEDULE L.

(*Rule 99.*)

(*Form of notice to inspect documents.*)

CANADA,	}	In the Exchequer Court of Canada.
. Province of.....		A. B. vs. C. D.

Take notice that you can inspect the documents mentioned
in your notice of the.....day of.....A.D.....
(except the deed numbered.....in that notice), at my office,
on Thursday next, the.....instant, between the hours
of 12 and 4 o'clock.

Or that the (plaintiff or defendant) objects to giving you
inspection of the documents mentioned in your notice of the
.....day of.....A.D. ...on the ground that
(*state the ground*).

Dated.....day of....., 18....

X. Y.,

Solicitor for.....

To Z., Solicitor for.....

SCHEDULE M.

(Rule 108.)

(Form of notice to admit documents.)

CANADA, } In the Exchequer Court of Canada.
 } A. B. vs. C. D.
 Province of. }

Take notice that the plaintiff (or defendant) in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant (or plaintiff), his solicitor or agent, at..... on the.....day of....., between the hours of.....; and the defendant (or plaintiff) is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed as they purport respectively to have been; that such as are specified as copies are true copies, and such documents as are stated to have been served, sent or delivered were so served, sent or delivered respectively, saving all just exceptions to the admissibility of all such documents as evidence in this cause.

Dated, &c.

To E. F., solicitor (or agent) for plaintiff (or defendant.)

G. H. solicitor (or agent) for plaintiff (or defendant).

(Here describe the documents, the manner of doing which may be as follows :)

ORIGINALS.

<i>Description of Documents.</i>	<i>Dates.</i>
Deed of covenant between A. B. and C. D., first part, and E. F., second part.....	January 1, 1848.
Indenture of lease from A. B. to C. D.....	February 1, 1848.
Indenture of re-lease between A. B., C. D., first part, &c.	February 2, 1848.
Letter, defendant to plaintiff.....	March 1, 1848.
Policy of insurance on goods by ship "Isabella," on voyage from Oporto to London.....	December 3, 1847.
Memorandum of agreement between C. D., captain of said ship, and E. F.....	January 1, 1848.
Bill of exchange for £100, at three months, drawn by A. B. on and accepted by C. D., indorsed by E. F. and G. H....	May 1, 1849.

COPIES.

<i>Description of Document.</i>	<i>Dates.</i>	<i>Original or Duplicate served, sent or delivered, when, how and by whom.</i>
Register of baptism of A. B. in the parish of X.....	January 1, 1848....	
Letter, plaintiff to defendant.....	February 1, 1848..	Sent by general post, February 2, 1848.
Notice to produce papers..	March 1, 1848....	Served March 2, 1848, on defendant's attorney, by E. F., of, &c.
Record of judgment of the Court of Queen's Bench, in an action, J. S. v. J. N.	Trin. Term, 10 Vic.	

SCHEDULE N.*(Form for setting down special case.)**(Rule 115)*

CANADA,

Province of.....

} In the Exchequer Court of Canada.

Between

A. B.,

Plaintiff,

AND

C. D. and others,

*Defendants.*Set down for argument the special case filed in this action
on the.....day of.....

Dated, &c.

X. Y., *Solicitor for*.....**SCHEDULE O.****FORMS OF JUDGMENT.****I. DEFAULT OF DEFENCE IN CASE OF LIQUIDATED
DEMAND.**

CANADA,

Province of.....

} In the Exchequer Court of Canada.

Between

A. B.,

Plaintiff,

AND

C. D. and E. F.,

Defendants.

30th November, 1876.

This action coming on for trial [the day of
 1876] this day, before in the presence of counsel
 for plaintiff and the defendants [*or, if some of the defendants
 do not appear*, for the plaintiff and the defendant, C. D.,
 none appearing for the defendants E. F. and G. H., al-
 though they were duly served with notice of trial, as by affi-
 davit of filed the day of
 appears], upon hearing read the examination of the defend-
 ants, C. D., E. F. and G. H., taken in the cause, the ad-
 mission in writing, dated and signed by [Mr.
, the solicitor for] the plaintiff A. B., and by
 [Mr., the solicitor for] the defendant, C. D., the
 affidavit of filed the day of
 affidavit of filed the day of
 the evidence of, taken on their oral examination
 at the trial, and an exhibit marked X, being an indenture
 dated, &c., and made between [parties], and what was
 alleged by counsel on both sides : This Court doth declare,
 &c.

And this Court doth order and adjudge, &c.

5. JUDGMENT AFTER TRIAL BY A JURY.

[*Title, &c.*]

15th November, 1876.

The action having, on the 12th and 13th November, 1876,
 been tried before the Honourable Mr. Justice
 and a jury of the County of, and the jury having
 found [*state findings as in officer's certificate*], and the said Mr.
 Justice having ordered that judgment be entered
 for the plaintiff for \$ [and costs of suit, *or as the case
 may be*]; therefore it is adjudged that the plaintiff recover
 against the defendant \$ and [\$ for his costs of
 suit] *or* that the plaintiff recover nothing against the defend-
 ant, and that the defendant recover against the plaintiff
 [\$ for his costs of defence, *or as the case may be*].

6. JUDGMENT UPON MOTION FOR JUDGMENT.

[*Title, &c.*]

30th November, 1876.

This day, before....., Mr. X., of Counsel for the plaintiff [or as the case may be], moved on behalf of the said[*state judgment moved for*], and the said Mr. X., having been heard of Counsel for....., and Mr. Y., of Counsel for....., the Court adjudged.....

SCHEDULE P.(*Form of Writ of Fieri Facias.*)(*Rule 188.*)

CANADA,

Province of

Between

A. B.,

Plaintiff,

AND

C. D. and others,

Defendants.

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith:

To the Sheriff of....., Greeting:

We command you that of the goods and chattels of C. D., in your bailiwick, you cause to be made the sum of..... and also interest thereon at the rate of six per centum per annum, from the.....day of.....[*day of judgment or order, or day on which money directed to be paid, or day from which interest is directed by the order to run, as the case may be*], which said sum of money and interest were lately before us in our Exchequer Court of Canada, in a certain action [or certain actions, *as the case may be*], wherein

A. B. is plaintiff and C. D. and others are defendants [or in a certain matter there depending, intituled, "In the matter of E. F.," *as the case may be*], by a judgment [or order, *as the case may be*] of our said Court, bearing date the..... day of.....adjudged [or ordered, *as the case may be*] to be paid by the said C. D. to A. B., together with certain costs in the said judgment [or order, *as the case may be*] mentioned, and which costs have been taxed and allowed, by the taxing officer of our said Court, at the sum of....., as appears by the certificate of the said taxing officer, dated the.....day of..... And that of the goods and chattels of the said C. D., in your bailiwick, you further cause to be made the said sum of.....[costs], together with interest thereon at the rate of.....per centum per annum, from the.....day of.....[*the date of the certificate of taxation.* *The writ must be so moulded as to follow the substance of the judgment or order*], and that you have that money and interest before us in our said Court immediately after the execution hereof, to be paid to the said A. B., in pursuance of the said judgment [or order, *as the case may be*], and in what manner you shall have executed this our writ, make appear to us in our said Court immediately after the execution thereof, and have there then this writ.

Witness the Honorable William Buell Richards, Chief Justice of our Exchequer Court of Canada, at Ottawa, this.....day of.....in the year of our Lord one thousand eight hundred and....., and in the.....year of our reign.

The Præcipe for a writ of fieri facias may be in the following form which can be adapted for other writs also :

CANADA,

Province of.....

} In the Exchequer Court of Canada.

Between

A. B.,

Plaintiff,

AND

C. D.,

Defendant.

Seal a writ of *feri facias* directed to the Sheriff of.....
to levy of the goods and chattels of C. D.....the sum
of \$.....and interest thereon at the rate of \$.....per
centum per annum, from the.....day of.....
[and \$.....costs].

Judgment [or order] dated.....day of.....

[Taxing Master's certificate, dated.....]

X. Y., Solicitor for [*party on whose behalf writ is to issue*]

SCHEDULE Q.

(*Form of Writ of Venditioni Exponas.*)

(*Rule 192.*)

CANADA,

Province of.....

} In the Exchequer Court of Canada.

Between

A. B.,

Plaintiff,

AND

C. D. and others,

Defendants.

Victoria, by the grace of God, of the United Kingdom of
Great Britain and Ireland, Queen, Defender of the
Faith :

To the Sheriff of....., Greeting :

Whereas by our writ we lately commanded you that of the
goods and chattels of C. D. [*here recite the feri facias to the
end*], and on the.....day of.....you returned to
us, at our Exchequer Court of Canada aforesaid, that by vir-
tue of the said writ to you directed, you had taken goods and
chattels of the said C. D., to the value of the money and
interest aforesaid, which said goods and chattels remained on
your hands unsold for want of buyers. Therefore we being

desirous that the said A. B. should be satisfied, his money and interest aforesaid, command you that you expose for sale and sell or cause to be sold, the goods and chattels of the said C. D., by you, in form aforesaid, taken, and every part thereof for the best price that can be gotten for the same, and have the money arising from such sale before us in our said Exchequer Court of Canada immediately after the execution hereof, to be paid to the said A. B., and have there then this writ.

Witness the Honourable William Buell Richards, Chief Justice of our Exchequer Court of Canada, at Ottawa, theday of.....in the year of our Lord one thousand eight hundred and.....and the.....year of our reign.

SCHEDULE R.

(Form of Writ of Sequestration.)

(Rule 197.)

CANADA,

Province of.

} In the Exchequer Court of Canada.

Between

A. B.,

Plaintiff,

AND

C. D, and others,

Defendants.

Victoria, &c.

To....., Greeting:

Whereas lately, in our Exchequer Court of Canada, in a certain action there depending, wherein A. B. is plaintiff and C. D. and others are defendants [*or, in a certain matter there depending, intituled, "In the matter of E. F., as the case may be,* by a judgment [*or order, as the case may be*] of

our said Court, made in the said action [*or matter*], and bearing date the.....day of.....187..., it was ordered that the said C. D. should [pay into Court, to the credit of the said action, the sum of.....*or, as the case may be*]. Know ye, therefore, that we, in confidence of your prudence and fidelity, have given, and by these presents do give to you full power and authority to enter upon all the messuages, lands, tenements and real estate whatsoever of the said C. D., and to collect, receive and sequester into your hands not only all the rents and profits of the said messuages, lands, tenements and real estate, but also all his goods, chattels and personal estate whatsoever, and therefore we command you that you do, at certain proper and convenient days and hours, go to and enter upon all the messuages, lands, tenements and real estate of the said C. D., and that you do collect, take and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels and personal estate, and detain and keep the same under sequestration in your hands until the said C. D. shall [pay into Court, to the credit of the said action, the sum of.....*or, as the case may be*] clear his contempt, and our said Court make other order to the contrary.

Witness, &c.

SCHEDULE S.

(*Form of Writ of Delivery.*)

(*Rule 201.*)

CANADA,

Province of.....

} In the Exchequer Court of Canada.

Between

A. B.,

Plaintiff.

AND

C. D. and others,

Defendants.

VICTORIA, by the Grace of God, of the United Kingdom
of Great Britain and Ireland, Defender of the Faith.

To the Sheriff of.....Greeting :

We command you that without delay you cause the following chattels that is to say [*here en merate the chattels recovered by the judgment, for the return of which execution has been ordered to issue*], to be returned to A. B., lately in our Exchequer Court of Canada recovered against C. D. [or C. D. was ordered to deliver to the said A. B.] in an action in our said Court.* And we further command you, that if the said chattels cannot be found in your bailiwick, you distrain the said C. D., by all his lands and chattels in your bailiwick, so that neither the said C. D. nor any one for him do lay hands on the same until the said C. D. render to the said A. B. the said chattels; and in what manner you shall have executed this our writ make appear to us at our said Exchequer Court of Canada, immediately after the execution hereof, and have you there then this writ.

Witness the Honourable William Buell Richards, Chief Justice of our Exchequer Court of Canada, at Ottawa, theday of....., in the year of our Lord one thousand eight hundred and....., and theyear of our reign.

The like, but instead of a distress until the chattel is returned, commanding the Sheriff to levy on the defendant's goods the assessed value of it.

[Proceed as in the preceding form until the *, and then thus:] And we further command you that if the said chattels cannot be found in your bailiwick, of the goods and chattels of the said C. D., in your bailiwick you cause to be made.....[*the assessed value of the chattels*], and in what manner you shall have executed this our writ make appear to us at our Exchequer Court of Canada, at Ottawa, immediately after the execution hereof, and have you there then this writ.

Witness, &c.

SCHEDULE T.

(Rule 229.)

EXCHEQUER TARIFF.

FEES AND CHARGES TO BE ALLOWED TO ATTORNEYS
AND SOLICITORS IN THE TAXATION OF COSTS
BETWEEN PARTY AND PARTY.

Instructions.

For informations, statements of claim and petitions..	\$5 00
For special cases, answers, examinations, demurrers, pleas and exceptions.....	5 00
For amended or supplemental information, and peti- tion when such amendment not occasioned by the error or default of the plaintiff.....	2 00
For brief, for moving, for injunction.....	2 00
For interrogatories and for viva voce examinations of parties or witnesses.....	2 00
For special petitions in interlocutory matters.....	2 00
For special affidavits.....	1 00
For brief in suits by information, statement of claim or petition of right in cause coming on for trial or hearing.....	2 00
To defend proceedings commenced by information, petition or statement of claim.....	5 00
For instructions for order to revive or add parties...	2 00

The preparation of pleadings and other documents.

Drawing informations, petitions or statement of claim not exceeding 20 folios.....	5 00
Drawing defence, answer or other pleading not speci- ally mentioned, nor exceeding five folios in length	2 00
For examining and correcting the proof of any plead- ing or affidavits or other papers required to be printed, per folio.....	10

Preparing and filing joinder of issue.....	\$1 00
Suggestion as to the death of parties and the like....	1 50
Affidavit of service of information, statement of claim or petition.....	1 00
Special affidavit not exceeding five folios.....	1 00
Every bill of costs, not exceeding five folios.....	2 00
Copies of a notice of motion, order or a certificate to serve, per folio.....	20
Copies of all other documents or papers, per folio....	10
Notice of motion.....	1 50
Certificate to appoint guardian <i>ad litem</i>	1 50
Summons to attend Judge's chambers.....	1 50
Advertisements to be signed by Registrar, not exceed- ing five folios in length.....	1 50
Every writ of mesne or final process, not exceeding five folios.....	2 00
For every folio beyond the number provided for in any case, and for drawing or amending every other proceeding, notice, petition, or paper in a cause requiring to be drafted, not herein specially provided for, per folio, of necessary matter.....	25

Perusals.

For perusing the print of an information, petition, statement of claim or amended information, peti- tion, or statement of claim not exceeding 20 folios.....	1 00
For every folio exceeding 20 folios.....	05
For perusing an amended information, petition, or statement of claim when amended in writing...	1 00
The same rates as above for perusing answers in print or amended answer in writing.	
To the Attorney or Solicitor for perusing interroga- tories, not exceeding 20 folios.....	1 00
For every folio exceeding 20 folios.....	05
For perusing all special affidavits filed by opposite party, and examinations at the same rate.	
For perusal of copy of supplemental statement and copy of order to revive, each.....	1 00
In cases where pleadings or papers are printed, the amount actually and properly paid the printer is to be allowed, not exceeding per folio.....	30

Rule 229.)

ATTORNEYS
COSTS

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Attendance.

To inspect or produce for inspection documents pursuant to notice to admit or order for inspection,	
To examine and sign admissions ;	
On taxation of costs ;	
To obtain or give undertaking to defend, each . . .	\$1 00
On a reference, or examination of witnesses or parties per hour ;	
On a summons at Judge's Chambers ;	
On consultation or conference with counsel ;	
In court on motion, per hour ;	
In court on demurrer, special petition or application adjourned from Judge's Chambers, when set down for hearing or likely to be heard ;	
On hearing or trial of any cause or matter, per hour ;	
To hear judgment, when same adjourned ;	
For order made at Judge's Chambers, and to get same entered ;	
To settle draft of any judgment, decree, or order ;	
To pay money into court Each	2 00
Every other proper attendance	50

Services.

For service on a party or witness such reasonable charges and expenses as may be properly incurred.

Oaths and Exhibits.

To the Commissioner for oath	25
To the Attorney or Solicitor for preparing each exhibit	25
The Commissioner for marking each exhibit	10

Counsel.

Fee on drawing and settling pleadings, and advising on evidence	5 00
Fee on motion in court, up to	10 00
Fee on argument on demurrer not to exceed	20 00
Fee with brief on trial of issues or hearing to	40 00

(No more than two counsel fees to be taxed without an order of a judge).....
 Fee on motion for judgment to.....\$20 00
 (The above fees to counsel may be increased by order of the Court or of a Judge).....

Disbursements.

Besides the Registrar's Fees, reasonable charges shall be allowed to Attorneys and Solicitors for necessary disbursements and postage on services of notices, motions, subpoenas, translations, printing of the same, copies, and other incidental proceedings..... —
 In cases of special reference where by order of the Judge or Court, the Enquiry is to be proceeded with at same place other than Ottawa, the Referee shall be allowed travelling expenses not to exceed *per diem*..... 4 00
 For drafting report on reference, per folio..... 30
Per diem allowance during the time employed on the reference..... 10 00
 (To be increased by order of the Court or a Judge)
 When at the request of the parties with the assent of the Judge, or when by order of the Judge, an examination of witnesses is taken by a short-hand reporter, the expenses of so taking such examination, not to exceed per folio 30 cents including copy in long-hand to file in the case may be taxed as costs between party and party..... —
 In action under \$400, a deduction of one-third of the amount of the fees (other than disbursements) above allowed shall be made by the taxing officer —unless otherwise ordered by the Court or a Judge..... —

Where the proceedings are carried on accordingly to the practice of Her Majesty's Superior Court in the Province of Quebec, and where the foregoing tariff may not provide for or be applicable to any such proceedings, the fees shall be

taxed accordingly to the tariff now in force in the said Superior Court.

4th March, 1876.

(Signed),	WM. B. RICHARDS, C. J.
"	W. J. RITCHIE, J.
"	S. H. STRONG, J.
"	J. T. TASCHEREAU, J.
"	T. FOURNIER, J.
"	W. A. HENRY, J.

SCHEDULE U.

(Rule 230.)

FEES AND ALLOWANCES TO WITNESSES.

To witnesses residing within three miles of the Court per diem.....	\$1 00
To witnesses residing over 3 miles from the Court.	1 25
Barristers, Attorneys and Physicians, when called upon to give evidence in consequence of any professional services rendered by them, or to give professional opinions, per diem.....	4 00
Engineers and Surveyors, when called upon to give evidence of any professional services rendered by them, and to give evidence depending upon their skill or judgment, per diem.....	4 00
If the witnesses attend in one cause only, they will be entitled to the full allowance. If they attend in more than one cause they will be entitled to a portionate part in each cause only. The travelling expenses of witnesses over ten miles, shall be allowed, according to the sum reasonably and actually paid, and in no case shall exceed one shilling per mile one way.	

SCHEDULE V.*(Form of Subpœna.)**(Rule 237.)*

VICTORIA, by the Grace of God, of the United Kingdom
of Great Britain and Ireland, QUEEN, Defender of the
Faith, &c.

To....., *Greeting:*

We command you [and every of you], that, all excuses
ceasing, you do personally be and appear before the Justices
of our Exchequer Court of Canada, at.....on the
.....day of....., at.....o'clock
in the.....noon, [*or*....., an examiner or
other officer authorized to take the testimony of witnesses in
the cause hereafter mentioned, at such times and places as
he in writing shall appoint], to testify the truth according to
your knowledge in a certain cause depending in Our said
Exchequer Court of Canada, wherein.....is
petitioner *or*.....plaintiff, [*or*.....
and others are plaintiffs], and.....and others
or another is [*or* are] defendant [*or* defendants] on the part
of the.....[and you then and there bring with
you and produce.....], and hereof fail not
at your peril.

Witness, &c.

SCHEDULE W.*(Rule 246.)***EXCHEQUER COURT OF CANADA.****SHERIFF'S TARIFF.**

The following fees and allowances shall be taken and re-
ceived by the Sheriff in suits in the Exchequer Court of
Canada:

Every warrant to execute any process mesne, or final, directed to the Sheriff, when given to a Bailiff...	\$ 75
Arrest, when amount does not exceed \$200.....	2 00
“ “ “ \$400.....	4 00
“ “ over \$400.....	6 00

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(Rule 230.)

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Bail or other Bond.....	\$2 00
Assignment of the same.....	1 00
Service of Process, <i>Scire Facias</i> , Writ of Revivor, Information, or Statement of Claim, each defendant, (no fee for affidavit of service in such cases to be allowed unless service made or recognized by the Sheriff).....	1 50
Serving other pleadings, Subpœnas, Rules, Notices, or other papers (besides mileage).....	75
For each <i>additional</i> party served.....	50
For each Summoner on Writ of <i>Scire Facias</i> per day, to be paid by Sheriff.....	1 00
Receiving, filing, entering and endorsing all writs, informations, statements, pleadings, rules, notices or other papers, each.....	25
Return of all process and writs (except subpœna) informations, statements, pleadings, rules, notices, or other papers.	50
Every search, not being a party to a cause or his attorney.....	30
Certificate of result of such search, when required (a search for a writ against lands of a party, shall include sales under writ against same party and for the then last six months).....	75
Fee on striking jury.....	2 50
Serving each juror (besides mileage @ 13c. per mile).	50
Returning panel of jurors.....	1 00
Keeping and checking pay list of jurors' attendance, in each case.....	1 00
Every jury sworn or cause tried before a Judge.....	1 00
Poundage on executions and on writs in the nature of executions where the sum made shall not exceed \$1000, six per cent.	
When the sum is over \$1000 and under \$4,000, three per cent., when the sum is \$4,000 and over, one and a half per cent., in addition to the poundage allowed up to \$1000, exclusive of mileage, for going to seize and sell, and except all disbursements necessarily incurred in the care and removal of property.	
Schedule taken on execution or other process, in-	

cluding copy to defendant, not exceeding five folios.....	\$ 1 00
Each folio above five.....	10
Drawing advertisements when required by law to be published in the <i>Official Gazette</i> or other newspaper, or to be posted up in a Court House or other place, and transmitting same, in each suit.	1 50
Every necessary notice of sale of goods, in each suit.	75
Every notice of postponement of sale, in each suit..	25
The sum actually disbursed for advertisements required by law to be inserted in the <i>Official Gazette</i> or other newspaper.	
Executing writ of possession besides mileage.....	6 00
Bringing up prisoner on attachment or <i>habeas corpus</i> , besides travel, @ 20c. per mile.....	1 50
Actual and necessary mileage from the Court House to the place where service of any process, paper or proceeding is made, per mile.....	13
Seizing estate and effects on attachment against debtor	3 00
Removing or retaining property, reasonable and necessary disbursements and allowances to be made by order of the Court or a Judge.	
Presiding or attendance on execution of writ of enquiry or under any writ of escheat, or other writ of a like nature.....	5 00
Summoning each juror in such case.....	25
Bailiff's fee summoning jury, mileage per mile.....	13
Hire of room, if actually paid, not to exceed \$2 per day.	
Mileage from the Court House to the place where writ executed per mile.....	13
Drawing bond to secure goods seized, if prepared by Sheriff.....	1 50
Every letter written (including copy) required by party or his Attorney respecting writs or process, when postage prepaid.....	50
Drawing every affidavit when necessary and prepared by Sheriff.....	25
Giving possession of lands, exclusive of mileage and assistance.....	5 00
All necessary disbursements to surveyors and others for surveying the lands and giving possession, to be allowed to the Sheriff.	

CORONERS.

The same fees shall be taxed and allowed to Coroners for services rendered by them in the service, executions and return of process, as allowed to Sheriffs for the same services and above specified.

TARIFF OF FEES TO CRIER.

The following fees shall be taxed to the Crier of the said Court :

Calling every case with or without a jury.....	50
Swearing each witness or constable.....	15
Proclamation and calling parties connected with proceedings other than witnesses or constables, each person	25
On each inscription for <i>enquete</i> in actions not contested	50

4th March, 1876.

(Signed),	WM. B. RICHARDS, C. J.
"	W. J. RITCHIE, J.
"	S. H. STRONG, J.
"	J. T. TASCHEREAU, J.
"	T. FOURNIER, J.
"	W. A. HENRY, J.

SCHEDULE X.

The following fees shall be paid to the Registrar of the Exchequer Court of Canada:

On sealing every writ (besides filings).....	\$ 2 00
On certifying every office copy of information or statement of claim and affixing seal of the Court when necessary.....	2 00
Filing every writ, affidavit or other proceeding or paper not specially provided for	10

Amending every writ or other proceeding or paper..	\$ 30
Every ordinary rule or order.....	50
Special rule or order not exceeding six folios.	1 00
Each additional folio.....	25
Every judgment and entering the same.....	2 00
Taxing every bill of costs, and giving allocatur (besides filings).....	1 00
Every reference, enquiry, examination or other special matter referred to the Registrar, for every meeting not exceeding one hour.....	1 00
Every additional hour or less.....	1 00
For every report made by the Registrar upon such reference, &c.....	1 00
Upon payment of money into Court, every sum under \$200.....	1 00
On \$200 to \$400.....	2 00
On \$400.....	4 00
A percentage on money over \$400 paid in under pleadings at the rate of one per cent.	
Receipt for money in margin of answer.....	25
Every other certificate required from Registrar (including any necessary search), and seal of the Court when necessary.....	1 00
Exemplification or office copy of proceedings, per folio.....	10
Every search, if within one year.....	20
Every search, if for one year and within two years..	25
Every search for papers, or a general search in one cause.....	50
Every search in any book.....	25
Every affidavit, affirmation or oath administered by Registrar.....	25
Entering satisfaction of judgment and filing satisfaction piece.....	50
Every commission or order for examination of witnesses.....	1 50
On filing every information, statement or petition of right.....	2 00
Entering every cause for trial when cause tried by a jury.....	5 00
When tried without a jury.....	2 00

Entering or setting down a cause for hearing on demurrer, special case or petition of right.....	\$ 2 00
Every verdict taken, nonsuit, jury discharged or cause withdrawn.....	1 00
Every rule or order—	
Special not exceeding six folios.....	1 00
Every additional folio.....	25
Common.....	50
Every fiat or summons.....	50
Every enlargement on application to Judge in Chambers or on return of summons or otherwise.....	25
Every appointment for taxation of costs or otherwise, made by Registrar.....	25
Every appointment made by a Judge.....	50
On each deposition of every witness taken in writing, in contested cases, for every 100 words.....	10
For each deposition taken in writing <i>ex parte</i>	50
For adjourning <i>enquete</i> in writing.....	50
For filing answers to same.....	50
For taking down in writing answers to interrogatories upon articulated facts.....	1 00
If over 10 folios of 100 words, for each additional folio.....	10
On each opposition for payment or claim above \$1000.....	2 50
Above \$400 but not above \$1000.....	1 60
Of \$400 or under.....	1 40
On each opposition to secure charges to annul, or to withdraw—	
In actions above \$1000.....	2 50
In actions above \$400 and not above \$1000.....	1 60
In actions of \$400 or under.....	1 50
For preparing judgment of distribution.....	8 00
For drawing <i>process verbal</i> upon improbation.....	2 50
For preparing jury list.....	2 00

4th March, 1876.

(Signed),

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WM. B. RICHARDS, C. J.
W. J. RITCHIE, J.
S. H. STRONG, J.
J. T. TASCHEREAU, J.
T. FOURNIER, J.
W. A. HENRY, J.

THE EXCHEQUER COURT OF CANADA.

GENERAL ORDER.

Wednesday, the twenty-eighth day of February, 1877.

It is ordered that the suppliant in any Petition of Right, and the plaintiff in any other case, shall, on the first day of the sitting of the Court for the trial of any cause to be tried out of the City of Ottawa, file with the Acting Registrar of the said Court a copy of all the pleadings in the causes certified by the Registrar of the Court at Ottawa.

That at the time of delivering the said pleadings to the acting Registrar, the suppliant or plaintiff shall pay over to him the sum or fee of \$6, and on each day at the opening of the Court, a like sum of \$6 for every day during which the said trial continues.

If the suppliant or Plaintiff omits or refuses to pay in such sum then the defendant may do so and it shall be taxed or allowed him in the costs of the suit. If both parties neglect or refuse to pay such sum, then the Judge trying the cause may order that the same may be struck out of the list, and not further proceeded with at the said sittings, making such order as to the costs incurred at the trial up to that time as he may think fit, or he may in his discretion reserve the question of costs or make no order respecting the same.

The acting Registrar shall out of the said money be paid a fee of \$6 per diem for each day actually engaged in Court.

If at the termination of the sittings or at any time thereafter it is found that a sum has been paid to the acting Registrar in pursuance of this order in excess of that which may have been required to pay the fees of such Acting Registrar and other charges payable thereout then the Court or a Judge may order such excess to be refunded to the party who may have paid the same.

(Signed),

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WM. B. RICHARDS, C. J.

W. J. RITCHIE, J.

S. H. STRONG, J.

J. T. TASCHEREAU, J.

W. A. HENRY, J.

21 U

EXPENSES OF JUDGES AND SHERIFFS.

EXTRACT FROM AN ORDER IN COUNCIL, DATED 19TH DECEMBER, 1876, relating to arrangements made with reference to the trial of cases in the Exchequer Court, elsewhere than in Ottawa.

"1. The Judge shall receive his actual expenses for travelling and hotel accommodation, of which he will certify the gross amount pursuant to form A annexed."

The following is the form referred to:

A.

EXCHEQUER COURT.

JUDGE'S ACCOUNT.

THE GOVERNMENT OF CANADA,

TO THE HONORABLE MR. JUSTICE.....

Dr.

DATE.		AMOUNT.	
187..	Actual travelling expenses and hotel disbursements incurred by me in the trial of the causes below mentioned at....., in the Province of....., viz. : Gross amount.... [Here name the causes tried and the number of days occupied in the trials.]	\$	c.
		—	—

I certify that the above account is correct.

.....

Judge.

"2. The Sheriff shall receive (1) for his own remuneration the sum of \$5 for each day upon which his attendance is required by the Judge and actually given ; (2) for constables, the amount disbursed not exceeding the rate of \$1.50 each, for each day on which they are necessarily and actually engaged in attendance on the Court during trials, the number allowed being according to circumstances and as may be reasonably required by the Judge. The Sheriff's account shall be accompanied by vouchers, and shall be certified by the Sheriff and also by the Registrar of the Court pursuant to form B annexed."

The following is the form referred to :—

B.

EXCHEQUER COURT.

SHERIFF'S ACCOUNT.

THE GOVERNMENT OF CANADA,

TO SHERIFF OF.....Dr.

Province of.....

		\$	C.
	Actual attendance in person or by deputy on Judgeat the trial of the causes mentioned be- low.....days, at \$5 per day.....		
Constables (the num- ber required by Judge) at \$1.50 each per day for each day necessarily and actually engaged in attend- ance during the sittings of the Court, in all....days..		

Judge.

			\$	c.
		Names of Constables so attending, viz. :		
	Day		
			
		The causes tried were the following, viz. :		
			
			
			

I certify that the above account, amounting to \$., is correct.

.....

Sheriff.

I certify that I have laid this account before Mr. Justice, and I have examined it, and believe it to be correct.

.....

Registrar.

COURT HOUSES.

With regard to the use of Court Houses by the Judges of the Court of Exchequer, trying cases elsewhere than in the City of Ottawa, the Ontario Legislature in an Act intituled "An Act to provide for certain amendments of the law," passed in the 40th year of Her Majesty's reign, (1877) embodied the following provision, viz :—

COURT OF EXCHEQUER.

"1. Authority of Judges of the Court of Exchequer as to use of Court House, &c.— In case sittings of the Court of Exchequer of Canada are appointed to be held in any City, Town or place in which a Court House is situated, the Judge presiding at any such sittings shall have, in all respects, the same authority as a Judge at Nisi Prius in regard to the use of the Court House and other buildings or apartments set apart in the county for the administration of justice."

[No similar provision has been passed by the Legislatures of the other Provinces, but the Dominion Government have corresponded with the various Provincial Governments on the subject and satisfactory arrangements have been made.]

A N A C T

RESPECTING REFERENCES TO THE SUPREME COURT
OF CANADA AND THE EXCHEQUER COURT
OF CANADA IN CERTAIN CASES.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario enacts (and it is hereby agreed on behalf of the said Province of Ontario) as follows :—

1. Supreme Court and Exchequer Court of Canada to have Jurisdiction.—The Supreme Court of Canada and the Exchequer Court of Canada, or the Supreme Court of Canada alone, according to the provisions of the Act of the Parliament of Canada, known as "The Supreme and Exchequer Court Act," shall have jurisdiction in the following cases :

1. In Controversies between Canada and Ontario.—Of controversies between the Dominion of Canada and this Province.

2. In Controversies between Ontario and certain other Provinces.—Of controversies between any other Province of the Dominion, which may have passed an Act similar to this present Act, and this Province.

3. In certain cases involving the validity of Acts of Canada or Ontario.—Of suits, actions or proceedings in which the parties thereto, by their pleadings, shall have raised the question of the validity of an Act of the Parliament of Canada, or of an Act of the Legislature of this Province, when in the opinion of a Judge of the Court in which the same are pending such question is material ; and in such case the said Judge shall, at the request of the parties, and may without such request, if he thinks fit, order the case to be removed to the Supreme Court in order to the decision of such question.

[By this Act, passed by the Legislature of Ontario in 1877, sections 54, 55, 56 and 57 of the Supreme and Exchequer Court Act have been brought into force with respect to the Province of Ontario.]

AN ACT

TO AMEND THE ACTS RELATING TO THE SUPREME AND
EXCHEQUER COURTS.

[Assented to April, 1877.]

Preamble.—Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. Sec. 2 of 39 Vic. C. 26 Amended.—The second section of the Act passed in the thirty-ninth year of Her Majesty's reign and intituled. "*An Act to make further provision in regard to the Supreme Court and the Exchequer Court, of Canada,*" is amended by striking out all the words after "given" where it first occurs in the tenth line.

2. Section 5 Amended.—The fifth section of the said Act is amended by inserting after the word "witness" in the fifth line the words "within Canada," and by substituting the word "his" for the word "the" in the sixth line.

3. The Sheriff of Carleton to be Ex-Officio an officer of the Supreme Court.—The Sheriff of the County of Carleton shall be deemed and taken to be *ex-officio* an officer of the Supreme Court, and shall perform the duties and functions of a Sheriff in connection therewith.

APPEALS FROM THE MARITIME COURT OF ONTARIO.

By the Act of the Parliament of Canada, establishing "The Maritime Court of Ontario," intituted "AN ACT TO ESTABLISH A COURT OF MARITIME JURISDICTION IN THE PROVINCE OF ONTARIO," it is among other things provided as follows.—

"There shall be an appeal to the Supreme Court of Canada from all decisions of the Court having the force and effect of a definitive sentence or final order."

"In default of other provision either by this Act, or under General Rules made by virtue of this Act, or by virtue of the Acts relating to the Supreme and Exchequer Courts, the practice, procedure and powers as to costs and otherwise of the Supreme Court in other appeals shall, so far as applicable, and unless the Supreme Court shall otherwise order, apply and extend to appeals under this Act."

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2. B. N. A., '71...British North America Act, 1871. (34—35 Vic. ch. 28—Imperial).
3. P. C. A.....Parliament of Canada Act, 1875. (38—39 Vic. ch. 38—Imperial).
4. S. C. A.....Supreme and Exchequer Court Act. (38 Vic. ch. 11—Canada).
5. S. C. A. A....Supreme Court Amendment Act—"An Act to make further provision in regard to the Supreme Court and the Exchequer Court of Canada." (39 Vic. ch. 26—Canada).
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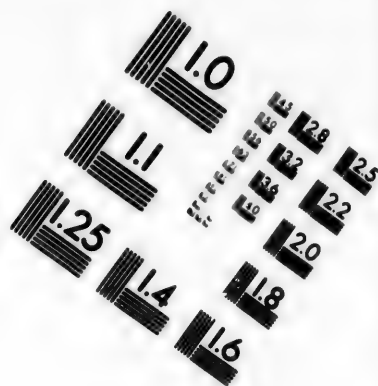
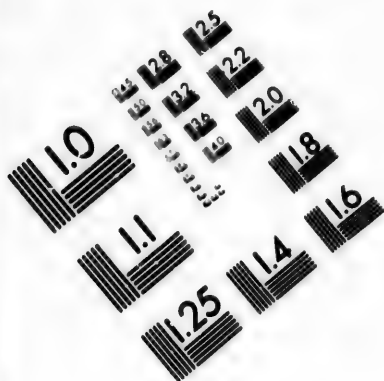
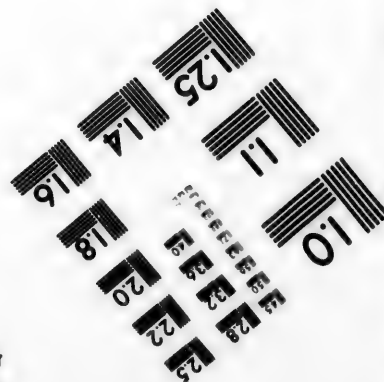
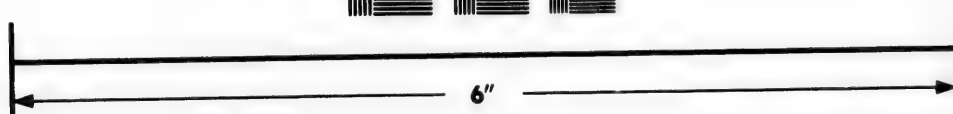
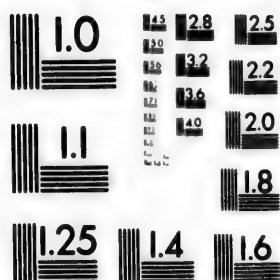


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ERRATUM.

Page 44, first line, "on the ground that the Crown can no wrong,"
should read "on the ground that the Crown can *do* no wrong."